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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 ARTURO CARAVANTES and  
4 FRANCISCO SOTARRIBA  
Plaintiffs

v.

09 CV 7821 (RPP)

5 53RD STREET PARTNERS, LLC  
6 d/b/a REMI RESTAURANT and  
OSCAR VELANDIA  
Defendants

-----x

New York, N.Y.  
April 3 2012  
9:48 a.m.

9 Before:

10 HON. ROBERT P. PATTERSON, JR.

11 District Judge

12 APPEARANCES

13 PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP  
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Attorneys for Defendants  
21 KERRY M. PARKER  
ALKIDA KACANI  
22 - also present -

23 JOHN MATT - Spanish Interpreter  
LILIANA HALAC - Spanish Interpreter  
24 RANDALL CARTER - Plaintiff AV Tech

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(Trial resumed)

THE COURT: You may recall the witness.

MR. SAXENA: Your Honor, Dr. Pearson had a medical appointment this morning but is on her way into the courthouse now.

THE COURT: Next witness then?

MR. SAXENA: We actually had a few housekeeping matters that we were hoping to clear out.

THE COURT: All right.

MR. SAXENA: We're just working on the microphone, Judge.

(Pause)

MR. DELANEY: Your Honor, we are just going to move a few documents into evidence. We have got another stipulation to enter --

THE COURT: All right.

MR. DELANEY: -- and a few other things.

Plaintiffs are going to move Plaintiffs' Exhibit 98 and 99 into evidence.

THE COURT: Hand them up.

MR. DELANEY: Your Honor, these are the notices of right to sue from the EEOC, from both Mr. Caravantes and Mr. Sotarriba. Plaintiffs move both of these exhibits into evidence.

THE COURT: Any objection?

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1 MR. PARKER: No objection.

2 THE COURT: 98 and 99 are admitted into evidence.

3 (Plaintiff's Exhibits 98 and 99 received in evidence)

4 MR. DELANEY: Plaintiffs are going to move Plaintiffs'  
5 Exhibit 4 into evidence. Plaintiffs' Exhibit 4 is a letter of  
6 recommendation from Mr. Francesco Pistorio for Oscar Velandia.  
7 Plaintiffs move Plaintiffs' Exhibit 4 into evidence.

8 THE COURT: Any objection?

9 MR. PARKER: No, your Honor.

10 THE COURT: Subject to connection? I don't see the  
11 connection.

12 MR. DELANEY: The relevance is going to, in general,  
13 the trust and authority that was invested in Mr. Velandia by  
14 the general manager, which is part of that picture for us.

15 THE COURT: It's dated October 2007?

16 MR. DELANEY: Correct, your Honor. It's during the  
17 relevant period.

18 THE COURT: I'm sorry?

19 MR. DELANEY: That's correct. That's during the  
20 relevant time period.

21 THE COURT: With no objection, Plaintiffs' Exhibit 4  
22 is admitted in evidence.

23 (Plaintiff's Exhibit 4 received in evidence)

24 MR. DELANEY: Plaintiffs are moving Plaintiffs'  
25 Exhibit 12D into evidence.

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1           Plaintiffs' Exhibit 12D, your Honor, is a letter from  
2           the general manager, Francesco Pistorio, confirming that  
3           Mr. Velandia and Mr. Pablo Solis have been given the  
4           responsibility of managing the tip pool at the restaurant.  
5           Again, your Honor, we believe it goes to Mr. Velandia's  
6           authority, both actual and apparent. So plaintiffs move  
7           Exhibit 12D into evidence.

8           THE COURT: Any objection?

9           MR. PARKER: No.

10          THE COURT: 12D is admitted in evidence.

11          (Plaintiff's Exhibit 12D received in evidence)

12          MR. DELANEY: Your Honor, this next one is more of a  
13          housekeeping, so Plaintiffs' Exhibit 31 has been admitted into  
14          evidence, and that's the video excerpt that we saw during  
15          Mr. Caravantes' direct examination. What I have here is a  
16          transcript. There is some audio in that file, so what I have  
17          here is a translation, so there are two voices speaking in  
18          Spanish at the very beginning of that excerpt, and I have here  
19          a transcript which I believe is in your binder as 31T-REV. I'm  
20          going to hand it around now.

21          Your Honor, 31T-REV, attached to it is a certificate  
22          of accuracy from Merrill Corporation, attesting that the  
23          translation is true and accurate. So plaintiffs move 31T-REV  
24          into evidence.

25          THE COURT: Any objection to 31T-REV?

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1 MR. PARKER: Your Honor, I do have an objection. I  
2 believe we have worked it out between counsel, but just let me  
3 state, if I may, that when the plaintiffs introduced P31, it  
4 was an excerpt of a longer video. I had objected to its  
5 admission. Your Honor admitted it, but I maintained the  
6 objection but have suggested that the entire video be moved  
7 into evidence for completeness' sake. I believe we have an  
8 agreement on that.

9 MR. DELANEY: We do, your Honor. I don't have any  
10 objection to -- we'll put together the full -- it's like a  
11 20-minute file -- we'll put together the full file -- I don't  
12 have it with me today -- and we'll move that into evidence as  
13 well.

14 THE COURT: Well, this transcript is only of the part  
15 that you showed, as opposed to -- is it the transcript of all  
16 the statements made during the part you showed?

17 MR. DELANEY: It is of all the audible statements made  
18 during the part that we showed.

19 THE COURT: During the whole?

20 MR. DELANEY: So Plaintiffs' Exhibit 31 is an excerpt  
21 of, as Mr. Parker says, of a longer video file.

22 THE COURT: Yes, I understand that, but 31T-REV, is  
23 that just the part that was shown?

24 MR. DELANEY: Correct. It's a translation of the  
25 audible audio from that excerpt.

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1 THE COURT: Well, wasn't that some evidence that was  
2 stopped or cut at some point in that video?

3 MR. DELANEY: Correct, your Honor. What we did is, we  
4 showed the first 15 seconds, which showed Mr. Caravantes  
5 setting it up so that would be clear, and then there's dead  
6 space where nothing is happening, so we cut that, and that's  
7 where we see the jump in the video and then we start it again  
8 at what we believe is the relevant portion.

9 THE COURT: As far as the spoken words came, they only  
10 came on the latter part of the video; is that agreed upon by  
11 the parties?

12 MR. PARKER: I'm not sure whether -- I don't know,  
13 your Honor, whether this translation or transcription --

14 THE COURT: Well, why don't you all look at it again  
15 during the break --

16 MR. DELANEY: OK.

17 THE COURT: -- or overnight.

18 MR. PARKER: All right.

19 THE COURT: And let me know, because I think, just for  
20 accuracy's sake, I would like to know if it's confined to a  
21 certain portion or whether it covers before the break and after  
22 the break.

23 MR. DELANEY: What I may be able to do -- I'll work  
24 with Randall -- I may be able to time-code the excerpt so it's  
25 obvious.

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1 THE COURT: Just so I can see it.

2 MR. DELANEY: On that point, counsel and I worked out  
3 another agreement. Plaintiffs --

4 THE COURT: Subject to that, I'll admit 31T-REV,  
5 subject to that agreement, which I think you're going to get  
6 but presuming you're going to get. But I sustain any objection  
7 of the defense that they are entitled to have the full tape  
8 shown to the Court, and they will have that opportunity to on  
9 their case.

10 (Plaintiff's Exhibit 31T-REV received in evidence)

11 MR. DELANEY: Your Honor, related to the transcripts,  
12 Plaintiffs' Exhibits 28 and 29 were both admitted into evidence  
13 subject to -- there was a transcription. And, your Honor, we  
14 had a discussion about how you wanted some kind of attestation  
15 or testimony from the woman who had done the transcription.  
16 That woman is named Cynthia Romero. She's a contractor for  
17 Merrill Corporation; she's based in Florida, so it's very  
18 difficult to get her here and to track her down. So what I did  
19 with Mr. Parker is, he agreed he would have no objections to us  
20 admitting 28T and 29T, and he's going to do the same; he's got  
21 some excerpts of audio files that he's going to put in some  
22 transcriptions, and we're not going to object to those either.  
23 So we've got a stipulation between the two of us.

24 THE COURT: Stipulations, 28T, 29T, agreed to by both  
25 parties?

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1 MR. PARKER: Yes, your Honor.

2 THE COURT: 28T and 29T are admitted in evidence.

3 (Plaintiff's Exhibits 28T and 29T received in  
4 evidence)

5 THE COURT: Have you got a copy?

6 MR. DELANEY: We'll get some and hand them up, your  
7 Honor.

8 Plaintiffs are now going to move two stipulations into  
9 evidence, marked S2 and S3.

10 THE COURT: I'm sorry, I was reading the stip,  
11 proposed reading of 28T.

12 S2 and S3 are in. I don't have 29T and 28T. Oh, here  
13 it is.

14 We have S2 and S3?

15 MR. DELANEY: Correct, your Honor. So these are  
16 stipulations. S2 are admissions by Mr. Velandia from the  
17 requests for admission we made during discovery, so we have got  
18 a stipulation on his admissions. So we move S2 into evidence.

19 THE COURT: Any objection?

20 MR. PARKER: No, your Honor.

21 THE COURT: All right. S2 is admitted in evidence.

22 (Plaintiff's Exhibit S2 received in evidence)

23 MR. DELANEY: And S3 are admissions from the  
24 defendant, 53rd Partners LLC, again, based on our requests for  
25 admissions from fact discovery. So we move S3 into evidence.



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1 THE COURT: No objection?

2 MR. PARKER: No, your Honor.

3 THE COURT: S3 is admitted in evidence.

4 (Plaintiff's Exhibit S3 received in evidence)

5 THE COURT: S3 is admitted in evidence. I don't think  
6 I mentioned 28 and 29; they're admitted in evidence.

7 (Plaintiff's Exhibits 28 and 29 received in evidence)

8 MR. DELANEY: So Dr. Pearson is here now, so we have  
9 one last exhibit that we are marking solely for identification,  
10 your Honor.

11 THE COURT: All right.

12 MR. DELANEY: Now, this is the map, the floor plan of  
13 Remi Restaurant that we were showing during our case --

14 THE COURT: Yes.

15 MR. DELANEY: -- along with the pictures that were  
16 shown during our direct examinations. So this is Plaintiffs'  
17 Exhibit 205, and we're submitting it just for identification.

18 THE COURT: 205 is for identification only.

19 We can call the next witness. I see Dr. Pearson is  
20 here.

21 MR. PARKER: Dr. Pearson.

22 THE COURT: Good morning, Dr. Pearson. You are  
23 reminded you are still under oath.

24 THE WITNESS: Yes, good morning. Thank you.

25

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1 JESSICA PEARSON, resumed.

2 CROSS-EXAMINATION CONTINUED

3 BY MR. PARKER:

4 Q. Dr. Pearson, in your direct examination, do you recall  
5 testifying about what's called a differential diagnosis?

6 A. Yes.

7 Q. What is a differential diagnosis?

8 A. It is other diagnoses that clinicians are supposed to think  
9 about and consider when making a diagnosis.

10 Q. And that would apply as well to an opinion with respect to  
11 posttraumatic stress disorder, correct?

12 A. That you would use a differential, yes.

13 Q. And in Plaintiffs' Exhibit 109, there is a section on  
14 page -- Plaintiffs' Trial Exhibit page 5 of 6, which refers  
15 specifically to the differential diagnosis for PTSD, correct?

16 A. Yes.

17 Q. In the first sentence of that section, it again restates  
18 the requirement that the stressor must be of an extreme, and I  
19 quote, i.e., life-threatening nature, close quote, correct?

20 A. Yes.

21 Q. And without that, absent that level of a stressor, you  
22 would agree that PTSD would be ruled out as a diagnosis, would  
23 you not?

24 A. No, I would not agree. Without the life-threatening piece  
25 of it? Is that what you're asking?

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Pearson - cross

1 Q. Well, I'm reading from the excerpt from the diagnostic tool  
2 that you relied on and you say is the most --

3 THE COURT: Where are you reading from?

4 MR. PARKER: P109, Judge. It's actually the last page  
5 of the exhibit, differential diagnosis, the first sentence.

6 THE COURT: Page 5 of 6?

7 MR. PARKER: Yes.

8 THE COURT: Do you see that?

9 THE WITNESS: Yes.

10 BY MR. PARKER:

11 Q. You would agree, would you not, that the stressor has to be  
12 of an extreme nature in order for there to be a proper  
13 diagnosis of PTSD?

14 A. I agree with the extreme nature, yes.

15 Q. Absent an extreme stressor, this section discusses the  
16 diagnosis of adjustment disorder, right?

17 A. Yes, as one other possibility, yes.

18 THE COURT: What does differential diagnosis mean?

19 THE WITNESS: It means that when you are thinking  
20 about how a person fits criteria for a diagnosis, you should be  
21 thinking about some other diagnostic possibilities as well.  
22 So, for each disorder in the DSM, it provides you some  
23 guidelines to think about, what other possibilities might  
24 exist.

25 Q. In your report, you do not include a section on

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Pearson - cross

1 differential diagnosis, did you?

2 A. No, I did not.

3 Q. You didn't discuss at all in your report adjustment  
4 disorder, did you?

5 A. I did not.

6 Q. Also, under the DSM section on posttraumatic stress  
7 disorder, psychologists are guided to rule out malingering in  
8 situations in which financial remuneration plays a role,  
9 correct?

10 A. Yes.

11 Q. What is malingering?

12 A. Malingering is the voluntary production or exaggeration of  
13 psychological symptoms for some type of external incentive.

14 Q. In connection with your work with Mr. Caravantes, you  
15 conducted some psychological tests, correct?

16 A. Yes.

17 Q. You mentioned, I believe, in your direct testimony that one  
18 of them was the SIRS-2 test, right?

19 A. Yes.

20 Q. The SIRS-2 test measures or contains various scales of  
21 measurement, correct?

22 A. Yes.

23 Q. And one of those scales is called an SU scale, right?

24 A. Yes.

25 Q. And that's for what they called subtle symptoms?

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Pearson - cross

1 A. It assesses general symptoms of psychopathology general  
2 symptoms of distress.

3 Q. Am I correct that depending on the scale, the score on the  
4 scale, for subtle symptoms, a measurement can be taken which  
5 measures the probability of feigning?

6 A. I don't know that I would put it exactly that way. It is a  
7 scale that you can get one of four levels of -- I don't want to  
8 call it probability of feigning, but elevation indicating a  
9 higher proportion of reported symptoms than normal clinical  
10 populations.

11 Q. Am I correct that the higher the score on the subtle  
12 symptom scale, the higher the probability of feigning exists?

13 A. I think -- I'm sorry, I thought I just answered that. I  
14 don't know that I would word it that way, especially with that  
15 particular scale, with the population that we're talking about  
16 in this particular case, but that it means a higher elevation  
17 in the probable range, which is where Mr. Caravantes fell, was  
18 an elevation indicating that he was reporting a higher  
19 proportion than clinical populations reported of that  
20 particular type of symptom. And that's often seen in  
21 individuals reporting trauma histories.

22 Q. If you could turn to Defendants' Exhibit 57.

23 THE COURT: 57? Defendants'?

24 THE LAW CLERK: This only goes to 55.

25 MS. KACANI: It's in the judge's binder.

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Pearson - cross

1 THE LAW CLERK: OK. Do you have more copies?

2 MS. KACANI: Yes.

3 BY MR. PARKER:

4 Q. Is that a copy of the SIRS-2 booklet with respect to  
5 Mr. Caravantes?

6 A. Yes.

7 Q. And I think what you said was there was an elevation --  
8 we're talking about subtle symptoms. What exactly does that  
9 mean?

10 A. That scale assesses general symptoms of psychopathology.  
11 So --

12 Q. And the reported scale score is, am I correct, on the first  
13 page of the exhibit on the right-hand side, under scale scores,  
14 where it says SU?

15 A. I'm sorry, did you ask me what the score is?

16 Q. No, no. I asked you, is that where the score is reported?

17 A. That's a raw score; yes.

18 Q. So the score shown there is 24, correct?

19 A. Yes.

20 Q. Am I correct that the highest number that one could attain  
21 on that particular measurement is a 25?

22 A. It's very difficult. I can't read in my copy what the  
23 highest score is, so I would have to see -- but if you have a  
24 clearer copy and 25 is at the very top --

25 THE COURT: Copy of what?

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Pearson - cross

1 THE WITNESS: The first page, mine is completely  
2 blacked out at the top, so I can't see what the highest score  
3 is.

4 THE COURT: Let me see what you've got.

5 THE WITNESS: See. Usually the highest score is going  
6 to be up here, but I have no idea --

7 THE COURT: Oh, you can't see what --

8 THE WITNESS: If your copy --

9 THE COURT: S2 profile?

10 THE WITNESS: Yes.

11 MR. PARKER: I apologize, it's the copy that I was  
12 provided.

13 THE WITNESS: OK.

14 BY MR. PARKER:

15 Q. So you do you not know whether or not whether 25 is the top  
16 score?

17 A. I don't off the top of my head, I'm sorry, I don't.

18 Q. If 25 is the highest score, is 1 the lowest score?

19 THE COURT: Well, is 25 the highest score that he  
20 achieved, or is this the highest score that's achievable?

21 MR. PARKER: I'll ask that, Judge.

22 BY MR. PARKER:

23 Q. Mr. Caravantes scored a 24, correct?

24 A. Yes.

25 Q. That's an elevated number, right?

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Pearson - cross

1 A. It is elevated in the --

2 THE COURT: What do you mean by elevated, Mr. Parker?

3 Q. It's an elevated number relative to the scores that one  
4 could achieve, it's closer to the top of the range than to the  
5 bottom of the range, right?

6 A. That's correct.

7 Q. And elevated means that he reported a higher number of  
8 common psychological problems as major issues, as compared  
9 others in the population, correct?

10 A. That is correct.

11 Q. If 25 is the highest score that one could attain, or that  
12 one could achieve on the scales for subtle symptoms, would 1 be  
13 the lowest?

14 A. Zero would be the lowest.

15 Q. If 25 were the highest score, what would that tell you? If  
16 25 were the highest score possible on this scale and someone  
17 were to attain a 25, what would that tell you?

18 A. It would tell me that they are endorsing a higher  
19 proportion of symptoms in that category than other clinical  
20 groups do.

21 THE COURT: Is this scale, S2 profile, of subtle  
22 symptoms? Is that what it is?

23 THE WITNESS: Yes.

24 THE COURT: Just confined to subtle symptoms?

25 THE WITNESS: Yes, just that scale looks at general



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Pearson - cross

1 symptoms, such as -- not severe symptoms, but general symptoms  
2 such as sleep problems, poor concentration, so things that are  
3 more general than specifically related to a particular  
4 disorder.

5 THE COURT: We don't have what the scores were?

6 THE WITNESS: We have the scores. The score was a 24.  
7 We just can't see --

8 THE COURT: That's the total, but we don't know what  
9 the scores are in the categories?

10 THE WITNESS: No, we do.

11 THE COURT: Oh, OK.

12 THE WITNESS: The scores on the right side are the  
13 scale scores.

14 THE COURT: I see.

15 THE WITNESS: We just can't see them on the profile.

16 THE COURT: Those numbers that appear on the scale  
17 scores are each -- RS is some kind of subtle score?

18 THE WITNESS: No, those are all different scales,  
19 looking at different reported symptoms.

20 THE COURT: Where do I find what compromised the 24?

21 THE WITNESS: Oh, the actual questions? Would be the  
22 following page --

23 THE COURT: Where you came up with 24 total.

24 THE WITNESS: You would look at the following pages,  
25 at the different items.

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Pearson - cross

1 THE COURT: I see, all right.

2 And are these translated for use of the Court? Are  
3 these --

4 THE WITNESS: I did not provide an English version.

5 THE COURT: They're all in Spanish, right?

6 THE WITNESS: Yes; the test was administered in  
7 Spanish.

8 THE COURT: Do you have an English version?

9 MR. PARKER: We do not, Judge.

10 THE COURT: I take it there is an English version?

11 THE WITNESS: Yes, there is.

12 THE COURT: So as far as I'm concerned, unless we  
13 translate it, I won't be able to tell what made up the 24,  
14 right?

15 BY MR. PARKER:

16 Q. You found that Mr. Caravantes' score of 24 was an elevated  
17 score, right?

18 A. Yeah, it's in the probable range; yes, that is an  
19 elevation.

20 Q. Is there a manual that goes with the SIRS-2 test?

21 A. Yes.

22 Q. Does that manual provide that reporting of the most common  
23 psychological problems as a major issue is uncharacteristic of  
24 patients with genuine disorders?

25 A. Are you quoting out of the manual? I don't have a manual

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Pearson - cross

1 in front of me.

2 Q. Is that your understanding, though?

3 A. My understanding is that the test looks at all of these  
4 different scales, and you don't look at one scale in isolation.  
5 That's not how the interpretive process occurs. So each scale  
6 has higher scores and lower scores; and in isolation, one  
7 elevation would not indicate that, but each elevation would add  
8 the accumulative factor to not matching genuine disorders.

9 Q. Generally speaking, do you agree that the more common  
10 psychological problems that are reported by a patient as a  
11 major issue is uncharacteristic of patients with genuine  
12 disorders?

13 A. Except with trauma-related disorders. The manual clearly  
14 states that individuals reporting trauma histories often have  
15 elevations on this subtle scale.

16 Q. And those who don't have trauma histories fall outside of  
17 that category, correct?

18 A. They're only -- in the manual they're only commenting on  
19 those with trauma histories having elevations on that scale.

20 Q. On the same page of the booklet --

21 A. I'm sorry, I didn't hear that.

22 Q. On the same page of the SIRS booklet, D57, the first page,  
23 two lines down where it says "SEV" --

24 THE COURT: I'm sorry, where are you?

25 MR. PARKER: D57, your Honor, first page.

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Pearson - cross

1 THE COURT: Page what?

2 MR. PARKER: Page 1.

3 THE COURT: Yes.

4 MR. PARKER: Just two lines beneath where it says SU,  
5 it says SEV in capital letters.

6 BY MR. PARKER:

7 Q. What is that scale?

8 A. That's severity scale.

9 Q. What is severity scale?

10 A. Meaning that the individual is endorsing the same symptoms  
11 that we were just talking about and having them be of a severe  
12 nature. So it's putting a qualitative description on the  
13 individual's report of the symptom.

14 Q. The test shows that Mr. Caravantes' score was a 16 on that  
15 category, right?

16 A. Yes.

17 Q. Am I correct that 16 is the highest number that one could  
18 attain on that category?

19 A. No.

20 Q. What is?

21 A. I can't read it in this picture, in this image here, but it  
22 is not the highest.

23 Q. So that score was elevated as well, was it not?

24 A. It was also elevated in the probable range, yes.

25 Q. Does the SIRS-2 also measure what are called rare symptoms?

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Pearson - cross

1 A. Yes.

2 Q. Where is that in the booklet?

3 A. The top one, RS.

4 Q. What are rare symptoms?

5 A. Symptoms that are rare in psychiatric populations, clinical  
6 populations.

7 Q. And was Mr. Caravantes' score on that category elevated as  
8 well?

9 A. No.

10 Q. What is the highest number that is graded for rare  
11 symptoms?

12 A. I'm sorry, again, I can't read -- I don't know what the  
13 score is.

14 Q. Is it a 5?

15 A. I don't know. I can't read it.

16 Q. How many times have you given the SIRS-2 test to a patient?

17 A. The SIRS-2 and the SIRS, which are basically the same test?  
18 Many times, a hundred. But, again, memorizing the top score is  
19 not necessarily part of the interpretation process.

20 Q. You also gave, as you discussed in your direct examination,  
21 you also gave a Personality Assessment Inventory?

22 A. Yes.

23 Q. And there was a written report on that as well, was there  
24 not?

25 A. A written report, meaning in my report, or there's an

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Pearson - cross

1 interpretation?

2 Q. An interpretation of that test.

3 A. The computer provides an interpretation, yes, a printout.

4 Q. And if you turn to Exhibit D56, what is D56?

5 A. The computer printout of the Personality Assessment  
6 Inventory.

7 Q. And the purpose of the Personality Assessment Inventory is  
8 what?

9 A. It provides clinical information on symptoms of  
10 psychopathology. Generally speaking, not specifically to this  
11 case but generally speaking, it provides a measure of validity  
12 as well as a clinical symptom picture, and it is closely -- the  
13 questions and the symptoms asked about closely matched to the  
14 DSM-IV.

15 Q. If you turn over to page 4 of the document, do you see  
16 where it says at the top, near the top of the page,  
17 "Supplemental PAI Indexes"?

18 A. Yes.

19 Q. What is that?

20 A. These are indices that have been developed through  
21 research, looking at certain data points on the test, and  
22 comparing them, within research, to look at what configurations  
23 might match certain clinical issues that you should be thinking  
24 about.

25 Q. One of the measurements is a malingering index, correct?

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Pearson - cross

1 A. That's correct.

2 Q. And you see that under where it says index and then it  
3 gives a value and a T score. What does value mean?

4 A. The value is the raw score.

5 Q. And what is the T score?

6 A. A T score describes how -- where someone is compared to a  
7 mean.

8 Q. Let's look at defensiveness index; for example, two lines  
9 up. There's a value of 5 and a T score of 63. What does that  
10 mean to you?

11 A. It means that the raw score on the defensiveness index was  
12 5, and that the T score -- so the mean is 50 in T scores, and  
13 then a 63 would be about one standard deviation above the mean,  
14 which is not particularly significant.

15 Q. Is the mean 50 for all of these indices?

16 A. On T scores, yes, the mean is 50.

17 Q. And out of all the T scores, the score for malingering for  
18 Caravantes was the highest, correct?

19 A. That's correct. They're not relative to each other, but  
20 yes.

21 Q. But in absolute terms, it's significantly higher than the  
22 next higher score, correct?

23 A. It is higher than the next score, yes.

24 Q. How many standard deviations is that off the mean of 50?

25 A. I think it's about four.

C43kcarl

Pearson - cross

1 Q. That would be statistically significant, would it not?

2 A. It is statistically significant, yes.

3 Q. Isn't the average raw score for malingerers lower than the  
4 5 that was valued here for Caravantes?

5 A. The average raw score for malingerers or for the general  
6 population taking the test, the norm population?

7 Q. For malingerers.

8 A. The average score for malingerers is -- I'm sorry, and what  
9 did you say it was?

10 Q. Isn't the average score for malingerers --

11 THE COURT: The average mean?

12 MR. PARKER: The average raw score.

13 THE WITNESS: OK. I didn't hear what the number was,  
14 I'm sorry.

15 BY MR. PARKER:

16 Q. Isn't the average raw score for malingerers in the area of  
17 4.4?

18 A. I actually don't know that number off the top of my head.

19 Q. Did you know it when you looked at this test?

20 A. I certainly evaluated this elevation, yes.

21 Q. Didn't you find that on the raw score of 5, that Caravantes  
22 had a high raw score on the malingering value?

23 A. Yes; this is an elevated score on this index.

24 Q. With regard to the T score, if it were two standard  
25 deviations off to of the mean, that would be statistically



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Pearson - cross

1 significant, would it not?

2 A. Yes. Two standard deviations above the mean? Yes.

3 Q. What T score would be two standard deviations off the mean  
4 of 50?

5 A. Somewhere around 70. It's not going to work out like that  
6 on this index because there aren't that many data points, but  
7 around that.

8 Q. And the result of these scores is that Caravantes scored  
9 the highest on the malingering index out of all the indices,  
10 right?

11 MR. SAXENA: Objection, your Honor; cumulative.

12 THE COURT: I'll allow the question. It's  
13 cross-examination.

14 THE WITNESS: They're not at all in comparison to each  
15 other, so saying one is higher than another -- there's no  
16 relevance to that. They're individual indices made up of  
17 individual data points. It happens to be the highest one in  
18 this list, but it's not in comparison to anything else. For  
19 example, the Rogers Discriminant Function is actually also a  
20 measure of feigning, which you can see is 49, it's actually  
21 below the mean -- so, again, they're not in relation to each  
22 other. I can't really answer that question.

23 BY MR. PARKER:

24 Q. Down beneath the PAI indexes, there's a category called  
25 "Coefficients of Fit with Profiles of Known Clinical Groups."

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Pearson - cross

1 What is a coefficient of fit?

2 THE COURT: Where are you?

3 MR. PARKER: That same page --

4 THE COURT: I see where you are, the second column at  
5 the bottom?

6 MR. PARKER: Yes, your Honor.

7 THE WITNESS: So these are clinical groups, and it's  
8 matching Mr. Caravantes' profile to those known groups, to see  
9 which is the best -- not to see which is the best fit but to  
10 show you all of the fits. And the closer you get to one on the  
11 coefficient of fit, the better match.

12 So this suggests that the fit for Mr. Caravantes with  
13 these cluster 2 -- these are the better matches based on his  
14 symptom profile.

15 THE COURT: What does cluster 2 mean?

16 THE WITNESS: It's a designation by the test itself,  
17 so they come up with --

18 THE COURT: What's included in cluster 2?

19 THE WITNESS: Off the top of my head, I am going to --  
20 I'm just going to think for one secondly.

21 It's usually a two -- it's a combination of two  
22 particular elevations to clinical scales, and I'm sorry, I'm  
23 not a hundred percent sure, without looking back at my notes,  
24 which two cluster 2 is versus cluster 7 and versus cluster 10.  
25 I don't know off the top of my head.

C43kcarl

Pearson - cross

1 THE COURT: What's included in cluster 7?

2 THE WITNESS: That's what I'm saying, I'm not sure  
3 which clinical scales. What it does is it looks at a  
4 combination of two clinical scales and it comes up with a  
5 profile picture of an individual. And it's matching him best  
6 to cluster 2 and next to someone reporting taking antipsychotic  
7 medication and next to cluster 7, and I don't recall which  
8 combination of clinical scales goes with which cluster.

9 THE COURT: What does FIT mean?

10 THE WITNESS: Coefficient of fit?

11 THE COURT: I'm sorry, what?

12 THE WITNESS: Coefficient of fit is how well it  
13 matches that group's profile.

14 THE COURT: FIT means fit?

15 THE WITNESS: Yes, fit.

16 THE COURT: For what?

17 THE WITNESS: Yes, match; it's basically a coefficient  
18 of how they're matching together, with 1.0 being the best match  
19 and negative numbers being the least consistent match.

20 THE COURT: 1.0 being the best match?

21 THE WITNESS: That's right.

22 BY MR. PARKER:

23 Q. So, in other words, looking at this list, all of the items  
24 listed above major depressive disorder were graded as better  
25 fits for a diagnosis for Mr. Caravantes than either major

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Pearson - cross

1 depressive disorder or posttraumatic stress disorder, correct?

2 A. So those would be singly, right, so major depressive  
3 disorder, and posttraumatic stress disorder would be singly  
4 whereas cluster designations are usually two or more  
5 combinations of clinical elevations. So one of these, cluster  
6 2 or cluster 7, is related to posttraumatic stress disorder and  
7 depression and social withdrawal and thought disturbance, and I  
8 don't know which one off the top of my head. So it's more of a  
9 combination of issues rather than a single diagnosis.

10 Q. Now, you said this test is computer-graded -- I think you  
11 said graded, did you not?

12 A. I did not say graded, but you put the results in a computer  
13 and the computer provides you with a printout and then you do  
14 an interpretation based on that printout.

15 THE COURT: The computer software is operated by  
16 personality assessment company; is that right?

17 THE WITNESS: Yes. By PAR.

18 THE COURT: PAR, right.

19 THE WITNESS: That's Person Assessment Resources or  
20 something similar to that.

21 BY MR. PARKER:

22 Q. If you turn over to page 6 of the same exhibit, 56, this  
23 narrative section, how is that prepared?

24 A. The same way. The computer provides you with a printout  
25 and you interpret the printout.

C43kcarl

Pearson - cross

1 Q. Am I correct that one of the findings here was that, in the  
2 third paragraph, that based upon the fact that certain  
3 indicators fell outside the normal range, it suggested that  
4 Caravantes may not have answered in a completely forthright  
5 manner?

6 MR. SAXENA: Objection, your Honor; this area was the  
7 subject of a motion in limine at the beginning of the case. It  
8 concerns malingering as specifically applied to determine  
9 credibility, which is the provenance of the finder of fact.  
10 And the Court ruled on the motion in limine and determined that  
11 malingering should not be used in this case to make  
12 determinations about Mr. Caravantes' credibility.

13 MR. PARKER: I don't think that was the ruling at all,  
14 and this is their document their expert, and her tests.

15 THE COURT: I'll have to review the ruling. I didn't  
16 think I said that, but I may have.

17 MR. PARKER: I believe the motion that the plaintiffs  
18 filed was to preclude Dr. Goldstein from testifying --

19 THE COURT: That's my recollection.

20 MR. PARKER: -- about Mr. Caravantes' credibility.  
21 And, frankly, Dr. Pearson's direct testimony, as well as her  
22 cross, involves, and has involved, the issue of malingering,  
23 which she admits the DSM instructs her to consider and rule  
24 out.

25 THE COURT: You can go ahead.

C43kcarl

Pearson - cross

1 THE WITNESS: Can you repeat the question, please.

2 MR. PARKER: Could I have that read back, please.

3 (Record read)

4 A. I would say -- so --

5 Q. My question is: That was one of the conclusions that was  
6 drawn, correct?

7 A. I wouldn't call that a conclusion, no. This is a piece of  
8 the interpretation that's provided by a computer, and that is a  
9 quote out of that interpretation. I don't think you call that  
10 a conclusion.

11 THE COURT: Are those test results?

12 THE WITNESS: Yes. These are items that we are  
13 supposed to consider.

14 THE COURT: Where is the language?

15 MR. PARKER: On page 6, the third full paragraph, the  
16 third paragraph, Judge, the second sentence of that paragraph.

17 (Continued on next page)

C43dcar2

Pearson - cross

1 (Pause)

2 Q. And in terms of that same thought, regarding the suggestion  
3 that Caravantes may not have answered in a completely  
4 forthright manner, there was a concern expressed that his  
5 responses might lead the evaluator to form a somewhat  
6 inaccurate impression of him based upon his responses, right?

7 A. That's the next sentence, yes.

8 Q. And further in the same paragraph, the following sentence  
9 states that the response pattern of Mr. Caravantes is unusual  
10 in that they indicate a defensiveness about particular personal  
11 shortcomings as well as an exaggeration of certain problems.

12 Correct?

13 A. The printout says that, yes.

14 Q. But you didn't find any of that to be in any part of your  
15 conclusions, did you?

16 A. I certainly read this section of the interpretation --

17 Q. Did you or did you not find any of that to be accurate in  
18 your conclusions?

19 A. I can't answer that in a "yes" or "no" question.

20 Q. Well, you accepted what Caravantes told you in terms of his  
21 narrative history and the underlying facts themselves as true,  
22 correct?

23 A. Solely accepted them? Just by his word? No.

24 Q. In the end, whatever you used, you accepted his statements  
25 to you as true, right?

C43dcar2

Pearson - cross

1 A. After doing my entire evaluation, yes.

2 Q. In addition to suggesting that Caravantes may not have  
3 answered in a forthright manner on the test, the validity of  
4 your test results section also suggests concern about a  
5 distortion of the clinical picture regarding Caravantes,  
6 correct? That would be in the last paragraph of page 6.

7 A. I'd like to respond to that more than a "yes" or "no," if  
8 possible. I mean, yes, you are just reading out of here and  
9 that's correct, it's in here.

10 Q. OK. You considered this report in reaching your  
11 conclusions and your diagnosis in the case, right?

12 A. I did.

13 Q. Now, the clinical features section on page 7, what is the  
14 purpose of that section of the report?

15 A. It's a description of the scale elevations and symptoms  
16 that the person endorsed, again, based on a computer printout,  
17 and so the role of the psychologist is to interpret that.

18 Q. Now, in the third paragraph, the second sentence, in the  
19 clinical features section, it states that "Caravantes is likely  
20 to be a socially isolated individual who has few interpersonal  
21 relationships that could be described as close and warm."

22 Did you find that to be your own conclusion?

23 A. I mean, at the time that he took this test there was  
24 significant social isolation and detachment that he was  
25 reporting from friends and family. This doesn't -- the test



C43dcar2

Pearson - cross

1 doesn't indicate the timeframe of which the person is talking  
2 about. It is not necessarily a lifelong issue.

3 Q. In your testimony, you talked about, or you identified  
4 major depressive disorder as a conclusion -- as a diagnosis of  
5 Mr. Caravantes, correct?

6 A. Yes.

7 Q. And you would agree that there were several stressors that  
8 Mr. Caravantes experienced prior to and during the time that  
9 you were seeing him; would you agree?

10 A. Yeah, there were stressors, yes.

11 Q. One of those was he reported financial hardship, correct?

12 A. Yes, from the loss of his job, yes.

13 Q. And did he tell you that he had been fired from Remi?

14 A. That was his understanding is, yes, that he was.

15 Q. Did he tell you that he had the opportunity to remain there  
16 in Remi's employ?

17 A. He did not tell me that.

18 Q. He used the word "fired," did he not, when he talked to  
19 you?

20 A. Rather than terminate?

21 Q. You used the word fired in your report to describe his  
22 leaving Remi, right?

23 A. If that's what it says in my report, then that's what it  
24 says in my report. I mean, I don't have my notes to  
25 double-check the exact word. But that was the implication that

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Pearson - cross

1 I understood, was fired.

2 Q. So you would use the word fired even if the patient didn't  
3 characterize his termination as a firing?

4 A. That's not what I said.

5 Q. Well, would you?

6 A. If the person characterized their being fired as being  
7 fired, then that's the word I would use.

8 Q. And if they didn't say they were fired, would you  
9 characterize a termination as a firing?

10 A. I don't -- I'm not sure I understand that question. Would  
11 I characterize --

12 Q. In your report you characterized his termination as a  
13 firing, did you not?

14 A. I did.

15 Q. OK. And you based your report on what he told you, right?

16 A. That's correct.

17 Q. There were other stressors that he had. He identified his  
18 relationship with his wife as a stressor, correct?

19 A. Yes.

20 Q. And he identified attempts to find employment as a  
21 stressor, did he not?

22 A. Yes.

23 Q. And, as well, he identified medical issues he was having as  
24 a stressor?

25 A. I don't know that he characterized them as a stressor but

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Pearson - cross

1 that he was having medical problems that were concerning him.

2 Q. Did you determine that the medical issues he reported to  
3 you constituted a stressor to him?

4 A. I don't know if I used that language; I'd have to look back  
5 at my report. But I do think that they were stressful.

6 Q. Well, "stressor" -- the word "stressor" has a significance  
7 in psychological diagnoses, does it not?

8 A. Yes. In certain circumstances, yes.

9 Q. As a psychologist attempting to determine what is causing a  
10 particular condition, you would, as a routine matter, attempt  
11 to identify a person's stressors, would you not?

12 A. Yes.

13 Q. And so did you conclude that the medical issues he reported  
14 to you was a stressor for Mr. Caravantes?

15 A. Relating to a diagnosis specifically?

16 Q. I'm just asking, did you consider them to be a stressor to  
17 him?

18 A. The implication of that question, though, is that it  
19 applies to a diagnosis, which is what you just asked. You said  
20 that it's related to making a diagnostic opinion. I'm  
21 suggesting that I do consider them to be stressful; the medical  
22 problems he was describing were stressful to him. I don't know  
23 that I considered them as related to his diagnosis.

24 Q. I didn't ask that question. I asked if you considered the  
25 medical issues to be a stressor for him. Yes or no?

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Pearson - cross

1 A. Again, I don't -- the way you're asking the question  
2 suggests that it's related to the diagnosis, and so I didn't  
3 think it was related to his diagnosis.

4 MR. PARKER: Your Honor, may I hand the witness her  
5 deposition?

6 THE COURT: Yes. I need the deposition, too.

7 (Pause)

8 Page and line?

9 MR. PARKER: Page 52, line 15, to 53, line 9.

10 A. I'm sorry. 53, line 9?

11 Q. On page 52 it starts.

12 First off, do you recall, Dr. Pearson, having your  
13 deposition taken in this case?

14 A. I do.

15 Q. And you have in front of you a copy of it. If you can  
16 turn, please, to page 52 --

17 A. Yep.

18 Q. -- line 15. Were you asked these questions and did you  
19 give these answers at your deposition?

20 "Q Now, did you develop any understanding of what the -- at  
21 the times that you interviewed Caravantes, what were the  
22 stressors that he was undergoing during that timeframe?

23 "A During the year period that I saw him?

24 "Q Yes.

25 "A Yes.

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Pearson - cross

1 "Q And what were they?

2 "A Financial hardship. His relationship with his wife and his  
3 three children was deteriorating or deteriorated. He was  
4 having a hard time finding employment. He was stressed about  
5 some medical stuff he had going on -- medical concerns with his  
6 eye. I would say those are the primary ones that we talked  
7 about."

8 Correct? That was your testimony?

9 A. That is my testimony.

10 Q. Do you agree that any one of those stressors that you  
11 testified about in your deposition could be a triggering cause  
12 of a major depressive episode?

13 A. I do not agree, no.

14 (Pause)

15 Some of them could be, yes.

16 MR. PARKER: I have nothing further.

17 THE COURT: Any redirect?

18 REDIRECT EXAMINATION

19 BY MR. SAXENA:

20 Q. Dr. Pearson, do you recall discussing on cross-examination  
21 the concept of physical integrity as stated in the DSM?

22 A. Yes.

23 Q. And do you recall testifying that that concept is not  
24 defined in the DSM?

25 A. Yes.

C43dcar2

Pearson - redirect

1 Q. Did you find that the criterion of a threat to physical  
2 integrity was satisfied with respect to Mr. Caravantes?

3 A. In my opinion, yes.

4 Q. What is the basis for that finding?

5 A. Because the DSM doesn't clearly define it, I also looked  
6 outside of the DSM, which is something that as a psychologist  
7 you can do research and look to the clinical community. And so  
8 I did. And there was discussion about threats -- actually,  
9 there is not a lot of discussion about threats to physical  
10 integrity, unfortunately, but there was discussion. And what I  
11 found was that physical sexual violations were consistent with  
12 threats of physical integrity itself.

13 Q. When you say the "psychological community," what do you  
14 mean by that?

15 A. Individuals -- psychologists, academic psychologists or  
16 clinical psychologists writing on, doing research on this area.

17 Q. Did you review any peer-reviewed publications?

18 A. I did.

19 Q. And what did you find in your review?

20 MR. PARKER: Objection. Hearsay.

21 THE COURT: Objection sustained.

22 MR. SAXENA: Your Honor, is Dr. Pearson permitted to  
23 testify as to the bases of her opinion notwithstanding their  
24 admissibility?

25 THE COURT: I don't remember anything about this on

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Pearson - redirect

1 direct.

2 MR. SAXENA: I believe the concept of threats to  
3 physical integrity was discussed on direct as well as on cross.

4 THE COURT: The concept was but nothing about outside  
5 reading. Is it in the report?

6 MR. SAXENA: OK. I will move on.

7 BY MR. SAXENA:

8 Q. Do you recall testifying on cross-examination just now  
9 about adjustment disorder?

10 A. Yes.

11 Q. Do you have experience diagnosing adjustment disorder?

12 A. Yes.

13 Q. Can you describe it?

14 A. Yes. So adjustment disorder -- I've seen adjustment  
15 disorder in my regular practice where individuals are coming in  
16 for psychotherapy. And adjustment disorder can stem from,  
17 again, everyday issues that people go through such as moves --  
18 things that are stressful events -- moves, going to college,  
19 losing a job, losing a relationship, and that they have a  
20 harder time adjusting to that particular event and it's causing  
21 some type of onset -- increase of onset of symptoms. They  
22 could be depressed symptoms. They could be anxious symptoms.  
23 Or you could actually have a disturbance in your behavior and  
24 be acting out like an adolescent or college-aged person acting  
25 out and having difficulty adjusting.

C43dcar2

Pearson - redirect

1 Q. Why did you determine that Mr. Caravantes did not have an  
2 adjustment disorder?

3 A. The stressors seen in adjustment disorder tend to be,  
4 again, as I said, of a much more normal range of experiences,  
5 and I did not -- the stressors and the traumas that  
6 Mr. Caravantes reported to me were more on the extreme range  
7 than these other kind of normal experiences that people have.

8 THE COURT: I just want to look at your report for  
9 what you did find.

10 THE WITNESS: 23.

11 THE COURT: Your report is --

12 THE WITNESS: Is 23.

13 THE COURT: 23, right?

14 THE WITNESS: Yes.

15 THE COURT: Let me find it.

16 THE WITNESS: About the diagnosis?

17 THE COURT: About the diagnosis.

18 THE WITNESS: Page 11.

19 THE COURT: Page 7?

20 THE WITNESS: 11.

21 THE COURT: 11.

22 THE WITNESS: Specifically if you are looking at PTSD,  
23 but in general the diagnosis starts on page 10.

24 THE COURT: You found a major depressive disorder?

25 THE WITNESS: That's right.



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Pearson - redirect

1 THE COURT: You were just talking about adjustment  
2 disorder. Your testimony just now is about an adjustment  
3 disorder, which is a lower category?

4 THE WITNESS: That's right.

5 THE COURT: I see.

6 BY MR. SAXENA:

7 Q. Dr. Pearson, I would like you to turn back, please, to the  
8 defendants' exhibit binder, to Exhibit 57.

9 Do you recall testifying on cross-examination about  
10 these subscales of the SIRS-2 test?

11 A. Yes.

12 Q. Can you describe how you read the SIRS-2 test?

13 A. Yes. So the SIRS-2 has an interpretation process. So you  
14 look at how many scales are elevated. And then there's a  
15 decision tree, which is not provided here in this exhibit. And  
16 the decision tree, in this particular case you look at how many  
17 elevations are in the probable range, and there were two.

18 Mr. Caravantes had two, which we talked about, the subtle and  
19 the severe. And that, plus some other scores, ultimately led  
20 to the designation of indeterminate general. And what that  
21 means is is that his profile overall is not -- is no more  
22 likely to be a malingering profile than the base rate of  
23 malingering in the norming of the test, which is 33 percent --  
24 34 percent.

25 Q. You just mentioned indeterminate general. Is that a

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Pearson - redirect

1 category among other categories?

2 A. Yes. So there's the feigning category. There's  
3 indeterminate evaluate, meaning there are a number of red red  
4 flags; you need to go look at lots of other information.  
5 There's indeterminate general, and then there's general  
6 responding. And so, as I said, indeterminate general means  
7 that this person is falling statistically around the same range  
8 as the base rate of malingering, which is 34 -- for this test,  
9 which is 34 percent.

10 THE COURT: Does malingering require intent?

11 THE WITNESS: Yes. So, really, we're using the word  
12 malingering, but you are exactly right, we should be talking  
13 about feigning or exaggerating, because malingering doesn't  
14 apply while you are doing it. The test doesn't measure that at  
15 all. The test measures the actual symptom report. So, really,  
16 feigning, which is making up symptoms or exaggeration, which is  
17 having symptoms and then increasing their severity, that's  
18 really what the test is looking at.

19 BY MR. SAXENA:

20 Q. So what would you describe as the result of the SIRS-2 with  
21 regard to Mr. Caravantes?

22 A. That his score fell in a range that was not elevated  
23 compared to the base rate of malingering, at 34 percent. So  
24 that's -- you know, again, 34 percent is not a statistically  
25 elevated level of concern, especially for a test that is quite

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Pearson - redirect

1 specific and sensitive; it can get you to about over  
2 90 percent.

3 Q. Did you consider the individual subscales of the SIRS-2 as  
4 well?

5 A. I did. We talked about how subtle -- the subtle scale is  
6 elevated. And, again, I mentioned earlier that this scale is  
7 often elevated in people who have experienced traumas because  
8 their symptoms tend to be a little bit more diffuse, so a  
9 little bit broader in their range, which we also saw on PAI,  
10 where it's not just specifically I'm hearing voices or I'm  
11 paranoid but there's a whole range of symptoms, and that's what  
12 that scale is looking at, and that's why the manual directly  
13 addresses that.

14           Severity of symptoms is what is the person's objective  
15 experience of how bad everything is right now. Literally the  
16 question is is that unbearable for you. And Mr. Caravantes  
17 report in that moment was that all of these experiences were  
18 unbearable. That was his subjective report. It was higher in  
19 proportion than other people's generally are. But I also found  
20 that to be consistent with the level of the distress that I saw  
21 and the level of distress that other clinicians are reporting  
22 from him, that he is really reporting severe distress.

23 Q. Could you please turn to Defendants' Exhibit 56.

24           And could you please turn to page 5 of that exhibit.  
25 I'm sorry. Page 4 of that exhibit.

C43dcar2

Pearson - redirect

1 A. Yes.

2 Q. Do you recall testifying earlier today about the  
3 malingering index?

4 A. Yes.

5 Q. Did you consider the malingering index to be a useful tool  
6 in evaluating Mr. Caravantes?

7 A. I mean, it was an index, like all of the other indices that  
8 I evaluated, all of the other information in this test that I  
9 considered. I didn't find it particularly useful because one  
10 of the roles -- one of the things we're supposed to do in  
11 psychological assessment is not just to accept what a printout  
12 from a computer tells us but to really look in depth at what  
13 that index is looking at and to see why are we getting this  
14 elevation, what is the meaning of it.

15 So when I looked at the malingering index, there are  
16 eight data points and these data points, in looking at them  
17 specifically, were consistent so with Mr. Caravantes symptom  
18 report. Although they may be unusual, which is what's causing  
19 this elevation for people who might be malingering, it wasn't  
20 unusual compared to all of the rest of his symptom report.

21 So, again, I considered it. It was important to  
22 consider. But it didn't change my thoughts about the test and  
23 the value of the test.

24 Q. And can you look further down the same page, page 4, at the  
25 "Coefficients of Fit." Do you see that?

C43dcar2

Pearson - redirect

1 A. Yes.

2 Q. Do you recall testifying about that earlier today?

3 A. Yes.

4 Q. Do you see that major depressive disorder and posttraumatic  
5 stress disorder are both listed under the column labeled  
6 "Database Profile" under "Coefficients of Fit"?

7 A. Yes.

8 Q. And do you see that next to them the notation 0.812 is  
9 listed?

10 A. Yes.

11 Q. What's your understanding of that number?

12 A. As I discussed before, the closer you get to 1, you have a  
13 better match, a better fit. So his profile is at that level as  
14 compared to profiles of posttraumatic stress disorder and  
15 profiles of major depressive disorder, and so that's a  
16 relatively high coefficient of fit.

17 Q. Could you please flip the page to page 5. Is the list on  
18 this page a continuation of the coefficient of fit listing?

19 A. Yes.

20 Q. And is there a way to characterize the number 0.812 with  
21 reference to the entire list of coefficient of fit?

22 A. It is high. Some profiles don't even match at a .812 at  
23 all, they don't match anything as consistently as his profile  
24 is matching those two profiles and others. And there are some  
25 other profiles that he's not matching as well. Something like

C43dcar2

Pearson - redirect

1 a fake bad profile is somebody who is exaggerating or, you  
2 know, faking bad. So these scores or these matches are  
3 significantly higher than that.

4 Q. Can you turn, please, to, in the same exhibit, page 6.

5 A. Yes.

6 THE COURT: Plaintiffs' exhibits. I've got to change  
7 books.

8 THE WITNESS: We are on the same one.

9 MR. SAXENA: No, the same, Defendants' 56. Sorry  
10 about that.

11 Q. Do you recall testifying about the section labeled  
12 "Validity of Test Results"?

13 A. Yes.

14 Q. Did you find this section useful with regard -- with  
15 specific regard to Mr. Caravantes?

16 A. Well, one of the things that I was asked earlier was about  
17 the PAI and its use with Spanish -- so Mexican Spanish-speaking  
18 individuals. And the validity sections of the PAI at this  
19 point have not been as empirically validated as the clinical  
20 scales. So you must, in doing the interpretation, put less  
21 weight on what those scores are, because we as clinicians don't  
22 actually know the meaning of those scores in relation to this  
23 specific population of Spanish-speaking Mexican individuals.

24 That being said, I still reviewed it. I still took it  
25 into consideration the way I did every item in this

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Pearson - redirect

1 interpretation. But, again, I had to give it a little bit less  
2 weight, and I primarily relied on the SIRS-2 because it has  
3 been validated with a Spanish-speaking population.

4 Q. Can you please turn the page to page 7.

5 Do you recall testifying about the section labeled  
6 "Clinical Features" on cross-examination?

7 A. Yes.

8 Q. How well is this section -- how reliable is this section in  
9 your opinion with regard to a person such as Mr. Caravantes?

10 A. I mean, it's certainly -- so this is basically a  
11 description from the T-scores. And so the first thing that I  
12 would do is look at the T-scores, because my job is to  
13 interpret T-scores, not to quote out of a manual or  
14 interpretation. So I look at the T-scores and the T-scores of  
15 the subscales. I read this clinical feature discussion. And I  
16 find it useful because it's matching a lot of what I have seen  
17 and a lot of what has been reported. And it's just, again, one  
18 more piece of information that I'm using to corroborate the  
19 symptom report.

20 Q. Let me ask you further about that, Dr. Pearson. On that  
21 page, the bottom paragraph, the second sentence begins, "The  
22 respondent has likely experienced," do you see that?

23 A. Mm-hmm, yes.

24 Q. Could you please read that sentence.

25 A. "The respondent has likely experienced a disturbing

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1 traumatic event in the past, an event that continues to  
2 distress him and produce recurrent episodes of anxiety."

3 Q. In light of your prior testimony concerning how you  
4 interpret this section of the test, how did you interpret this  
5 particular sentence?

6 A. I mean, this means that he was endorsing consistent items  
7 with experiencing a traumatic event, which is consistent with  
8 what he had reported to me and consistent with what he had  
9 reported to other people as well.

10 Q. And on the same page, could you please look at the second  
11 paragraph under "Clinical Features," and read the first  
12 sentence out loud.

13 A. "The respondent reports a number of difficulties consistent  
14 with a significant depressive" episode.

15 Q. I'm sorry. Does it say "episode"?

16 A. "Experience." Excuse me.

17 Q. And how did you interpret this sentence?

18 A. Again, it's just a measure of consistency. So he's  
19 reporting these symptoms here. He's reporting them to me. I'm  
20 observing them. I'm hearing about them from his wife. And all  
21 other sources of information are consistent with this.

22 MR. SAXENA: No further questions, your Honor.

23 THE COURT: Anything on recross?

24 MR. PARKER: Just a few, Judge.

25 THE WITNESS: Your Honor, excuse me. I just want to



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Pearson - redirect

1 use the restroom. Can I take two minutes for the restroom?

2 THE COURT: Sure. We will take a break.

3 We will take a break of ten minutes.

4 (Recess)

5 THE COURT: All right.

6 RECROSS-EXAMINATION

7 BY MR. PARKER:

8 Q. Dr. Pearson, on redirect you were asked some questions  
9 about adjustment disorder. And you said things like moving a  
10 residence, someone going away to college, someone losing a  
11 relationship, those are the types of things that you would  
12 normally be associated with an adjustment disorder?

13 A. They can be, yeah. Those can be the stressors.

14 Q. How about questions relating to a person's sexual identity,  
15 can that be a stressor that is associated with adjustment  
16 disorder?

17 A. Questions about them figuring out what their sexual  
18 identity is?

19 Q. Yes.

20 A. It could be.

21 Q. Did you consider that as a stressor for Mr. Caravantes?

22 A. No. He reported to me that that wasn't an issue.

23 Q. Did it occur to you, based upon the factual report that he  
24 gave you, that there might be an issue of sexual identity  
25 questioning?

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Pearson - recross

1 A. I'm sorry. Can you say the first part of your question?

2 MR. PARKER: Would you read it back, please.

3 (Question read)

4 A. I asked him about it, based on my interviews with him. I  
5 asked him about his sexual identity. And he told me that he  
6 was not homosexual and he had not had previous homosexual  
7 relationships or homosexual fantasies, and, therefore, I looked  
8 at it and determined that that wasn't the issue.

9 Q. But my question was based upon the facts that he told you  
10 about the relationship between him and Velandia, did you  
11 consider whether or not sexual identity questioning was a  
12 stressor for him?

13 A. I don't see that being different from what I said, but I  
14 obviously considered it because I asked additional --

15 THE COURT: He is asking you, one, whether you  
16 considered it, and the next question was whether you ruled it  
17 in or out.

18 THE WITNESS: So I considered it. I asked questions.  
19 And I ruled it out.

20 Q. With regard to the SIRS-2 test, you mentioned on redirect  
21 that it was graded as an indeterminate general category, right?

22 A. Yes.

23 Q. Was that your conclusion?

24 A. That's the conclusion using the interpretive method  
25 provided by the manual.

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Pearson - recross

1 Q. All right. Is that strictly a numbers-counting exercise or  
2 is it a --

3 A. It is a decision tree.

4 Q. And that is an interpretive conclusion, correct?

5 A. It's not my interpretation; it is a very clear decision  
6 tree model provided in the test.

7 Q. But it is not based on counting numbers, right?

8 A. It is based on counting numbers.

9 MR. PARKER: Your Honor, I have nothing else. Thank  
10 you.

11 THE COURT: All right. You are excused.

12 THE WITNESS: Thank you.

13 THE COURT: Thank you. Good luck with that baby now.

14 THE WITNESS: Thank you.

15 (Witness excused)

16 THE COURT: All right. Next witness.

17 MR. DELANEY: Your Honor, the plaintiffs are going to  
18 rest at this time subject to two reservations.

19 The first is with regard to Mr. Francesco Pistorio,  
20 who is not within the jurisdiction, he is in D.C. But  
21 Mr. Parker informs me that he believes he will appear live  
22 within his case, within Mr. Parker's case. And so we would --  
23 in order to avoid having to put designations in in our case in  
24 chief, we would like to reopen our case in chief for when  
25 Mr. Pistorio does appear live, or if he ends up not wanting to

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1 appear, and he is outside our subpoena range, that we are able  
2 to put in our designations as determined. And I don't believe  
3 Mr. Parker has any objections to that.

4 MR. PARKER: I do not have any objections to that,  
5 Judge.

6 THE COURT: No objection. All right, subject to that  
7 first reservation.

8 MR. DELANEY: And the second reservation is with  
9 respect to Dr. Paludi. She is our second expert. She is not  
10 available this week -- or she wasn't available last week.  
11 Sorry. She had preexisting commitments and could not break  
12 them. She was chairing or an integral part of an academic  
13 conference so we could not call her last week. And this week  
14 she has got religious obligations. She is a devout Catholic,  
15 and she has obligations all week, which makes us unable to call  
16 her this week. But she is available next week, assuming this  
17 case goes over into next week. And so we again would like to  
18 reopen our case in chief and call her Monday, I think, subject  
19 to further agreement with defense counsel.

20 THE COURT: Is that consented to?

21 MR. PARKER: Judge, I don't object and I don't think  
22 Mr. Delaney objects to the following, which I would want to  
23 disclose to the Court as well, because we are talking a little  
24 bit here about witness scheduling. As I mentioned at the  
25 outset of the case, I have two witness scheduling issues of my

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1 own. One is Francesco Pistorio, who is away right now on a  
2 family vacation that had been planned, he tells me, for a year,  
3 returning on Monday. I can't get him here until Tuesday.

4 I have Dr. Goldstein, our expert, who is available on  
5 Friday and on Monday. I'm concerned, and I want to bring it to  
6 the Court's attention, that I may have one or two small gaps  
7 where I do not have a witness available to testify and that we  
8 could -- and that's why I say if Mr. Delaney needs to call  
9 Dr. Paludi out of turn, I don't have any objection to that.

10 THE COURT: You have to tell me in advance what day is  
11 convenient, because if there is going to be a gap, I want to  
12 know when it is going to be.

13 MR. PARKER: I will do that, Judge.

14 THE COURT: Because there are some things I would like  
15 to do besides hearing this case, and I have to schedule one  
16 with the marshals. So it takes some time on my side, too, to  
17 accomplish these things.

18 MR. PARKER: I will refine this but my best guess  
19 right now would be part of Thursday afternoon and --

20 THE COURT: Well, you are going to have to have a -- I  
21 am going to have to have a period of a half a day or something  
22 like that.

23 MR. PARKER: If we do have one this week, it would  
24 likely be Thursday afternoon, and --

25 THE COURT: From noon or until 1?

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1 MR. PARKER: Yes. And we should have Dr. Goldstein  
2 available on Friday morning. I doubt that his testimony would  
3 take until 1 o'clock, but if we are talking about cutting off  
4 at 1 on Friday, that might not be an issue. Then perhaps part  
5 of Monday.

6 But I'll certainly let the Court know as soon as I can  
7 determine that.

8 THE COURT: Well, I may have to change that because  
9 the matter I want to take care of involves a number of people  
10 being present and I have to see what their schedules are.

11 So I gather that you could do Goldstein -- you could  
12 start Goldstein in the afternoon instead of the morning, if you  
13 wanted to?

14 MR. PARKER: On which day?

15 THE COURT: Thursday.

16 MR. PARKER: I will have to check. I mean, last night  
17 he --

18 THE COURT: He is going to have to be here. I mean,  
19 one of the things you learn as a judge is you have got to wait  
20 for a doctor in his office but you don't wait for him in the  
21 courtroom. They've got to wait and be present when they are  
22 called.

23 MR. DELANEY: Your Honor --

24 THE COURT: If necessary, we will issue him a  
25 subpoena.

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1 MR. DELANEY: I don't know if this is rational or not.  
2 Counsel and I discussed this beforehand. But since it looks  
3 very likely that we are going to have to sit Monday and Tuesday  
4 anyway, because that is when Dr. Paludi is available and I  
5 think Mr. Pistorio is only available Tuesday, might it make  
6 sense just to like have Friday off so you can do your other  
7 stuff and then we will just then pick up Monday and Tuesday?

8 THE COURT: I don't know if we are here because there  
9 are some devout Catholics involved in that case, too.

10 MR. PARKER: I will try to get ahold of Dr. Goldstein  
11 and report back to the Court.

12 THE COURT: The world can't revolve around  
13 Dr. Goldstein's practice. He can reschedule his clients just  
14 as easily as we can reschedule our court, if not more so. He  
15 has more flexibility than I do.

16 All right. Let's go ahead and get the case tried.  
17 But maybe I should make a call or two. I have other things to  
18 do during lunch.

19 MR. DELANEY: Your Honor, we'll also speak with  
20 Dr. Paludi and she may be able to appear Thursday afternoon or  
21 Thursday. Between the two of us, we can get the time filled, I  
22 think.

23 THE COURT: OK.

24 MR. DELANEY: Anyway, subject to those two  
25 reservations between Mr. Pistorio and Dr. Paludi, we rest.

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1           THE COURT: Subject to those two reservations, the  
2 plaintiff rests.

3           (Continued on next page)



C43kcar3

1 THE COURT: OK, call the defense witness.

2 MR. PARKER: Your Honor, the defendants call Oscar  
3 Velandia.

4 THE COURT: I'm going to change my mind. I think I  
5 better make some calls now before lunch -- I'll make at least  
6 one call before lunch -- because people I'm trying to get in  
7 touch with may be out to lunch. So I think before we swear in  
8 the witness, I'll take a break.

9 (Recess)

10 THE COURT: I can't do it Thursday, so we'll sit on  
11 Thursday.

12 OSCAR VELANDIA,  
13 called as a witness by the Plaintiff,  
14 having been duly sworn through the  
15 Interpreter, testified as follows:

16 THE DEPUTY CLERK: Please state your name and spell  
17 your first and your last name slowly for the record, please.

18 THE WITNESS: My name is Oscar Velandia, O-s-c-a-r  
19 Oscar Velandia, V-e-l-a-n-d-i-a.

20 DIRECT EXAMINATION (Through Interpreter)

21 BY MR. PARKER:

22 Q. Mr. Velandia, is your primary language Spanish?

23 A. No.

24 Q. Was your primary language?

25 A. Spanish.

C43kcar3

Velandia - direct

1 Q. Do you feel more comfortable today testifying with an  
2 interpreter?

3 A. Yes, I feel more comfortable this way.

4 Q. Do you speak English?

5 A. Yes.

6 Q. How would you rate your proficiency in English?

7 A. I would calculate that it is, for spoken, written -- would  
8 be 80 to 90 and for writing, 90.

9 Q. Where do you live?

10 A. I live in Queens County.

11 Q. How long have you lived there?

12 A. Ever since I came to live here in the United States.

13 Q. Whom do you live with?

14 A. I live with my sister, my nephew, and my partner.

15 Q. Where are you employed?

16 A. I work for Remi Restaurant.

17 Q. What is your job there?

18 A. Currently, I have shifts as waiter, and then I'm also  
19 captain for parties.

20 Q. What does "captain for parties" mean?

21 A. That means that I'm in charge of organizing private events  
22 at the restaurant.

23 Q. Are you a high school graduate?

24 A. Yes, I graduated.

25 Q. Where did you go to high school?

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Velandia - direct

1 A. It was in my country of origin, Colombia.

2 Q. Did you go to college?

3 A. Yes, I attended college.

4 Q. Where did you go to college?

5 A. Also in Colombia.

6 Q. Did you complete college?

7 A. No, I didn't get to.

8 Q. How much college did you finish?

9 A. I did two years in college.

10 Q. And what did you study?

11 A. Public accounting.

12 Q. When did you begin living in the United States?

13 A. In 1996.

14 Q. How old are you now?

15 A. I'm 42 years.

16 Q. So, doing math, how old were you when you came to the U.S.  
17 to live?

18 A. 26 years.

19 Q. Before emigrating to the U.S., what did you do  
20 professionally, if anything?

21 A. Right before coming to this country, I was working for a  
22 company, as Texas Instruments, and I was assistant accountant.

23 Q. Have you lived anywhere in the United States other than in  
24 New York City?

25 A. No, only New York.

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Velandia - direct

1 Q. When you came to New York, what was your first job?

2 A. I was working as a dishwasher at a restaurant.

3 Q. Do you remember who your employer was at that time?

4 A. Yes. The name of the restaurant was Erizo Latino.

5 Q. At some point, that changed, your employer?

6 A. Yes. After that, I started working at Remi.

7 Q. In what year did you start at Remi?

8 A. In '97.

9 Q. What was your first job?

10 A. I was hired as a busboy.

11 Q. How long did you serve as a busboy at Remi?

12 A. Perhaps approximately four years.

13 Q. After that, did your job change?

14 A. Yes. Then I was promoted to waiter.

15 Q. At some point in time, did the ownership of the restaurant  
16 change?

17 A. Yes; it changed in 2005.

18 Q. At that time, the time that the ownership changed, what was  
19 your job at Remi?

20 A. When the management changed, I was a waiter.

21 THE COURT: So, not only the ownership changed but the  
22 management changed?

23 THE WITNESS: Yes, your Honor, also management.

24 BY MR. PARKER:

25 Q. At that time, in 2005, when the ownership and management

C43kcar3

Velandia - direct

1 changed, who became in charge of the management of the  
2 restaurant?

3 A. Mr. Francesco Pistorio.

4 Q. What was his job title?

5 A. He was general manager.

6 Q. Did you know Mr. Pistorio before he became the general  
7 manager of Remi?

8 A. No, I didn't know him.

9 Q. Let's take the period of time beginning in 2005, when the  
10 ownership of the restaurant and management changed. What kind  
11 of products and services did Remi serve?

12 THE COURT: Before the management changed?

13 MR. PARKER: Right after the management changed.

14 THE COURT: Oh, after.

15 THE WITNESS: Well, the normal restaurant service of a  
16 restaurant is, food is served to customers. And then after the  
17 new management came, then we also started doing private  
18 parties.

19 And in addition to that we also have an area in the  
20 restaurant called Remi To Go, where we also serve food to go or  
21 to take away.

22 Q. Prior to the management and ownership change in 2005, did  
23 Remi Restaurant provide private parties?

24 A. Yes, also.

25 Q. Would you describe the areas of the Remi Restaurant where

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Velandia - direct

1 food and beverages are served to customers.

2 A. Yes. Mainly the Grand Canal, which is our main room and  
3 then we also have the private party room, called Rialto.

4 Q. Let's say before the management and ownership change  
5 occurred, you were a waiter, correct?

6 A. Yes, that's correct.

7 Q. Where in the restaurant did you work as a waiter?

8 A. Mainly at the Grand Canal, but then also my schedule would  
9 change as a waiter. But then I also had to work at both dining  
10 rooms.

11 Q. Are the responsibilities of a waiter at Remi the same or  
12 are they different, when working in the Grand Canal dining room  
13 as compared to the Rialto Room for a party?

14 A. Yes, I would say they differ a bit.

15 Q. How do they differ?

16 Let me do this: Would you describe, taking the time  
17 frame after the management and ownership changed in 2005, the  
18 duties of a waiter providing service in the dining room, the  
19 Grand Canal.

20 A. The main responsibility of the waiter is to come prepare  
21 the dining room for service. And once customers arrive, first  
22 we start taking the orders and serving drinks or beverages.  
23 And then at the end of the meal, we just make sure that the  
24 table is set again and is ready for the next group of  
25 customers.

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Velandia - direct

1 And at the end, then each waiter has to make their  
2 report and give it to the bartender.

3 Q. What type of report?

4 A. Well, it's the sum of all the sales, and then he generates  
5 something from the computer, and then they separate what's cash  
6 and what's credit cards.

7 Q. Is that report done every day that you work as a waiter?

8 A. Yes; each waiter has to do it.

9 THE COURT: Cut the check for the customers?

10 THE WITNESS: Yes, your Honor, each waiter has to  
11 print a check for his customers.

12 THE COURT: You take the order for the check?

13 THE WITNESS: Yes, sir, we do take the order for the  
14 check.

15 THE COURT: Do you bring the food to the table?

16 THE WITNESS: No, your Honor. There is a position for  
17 that, and it's the runners, the ones in charge of doing that.

18 THE COURT: Do the runners go from the kitchen to a  
19 serving table?

20 THE WITNESS: No. Runners come from the kitchen with  
21 the food, and they come upstairs and we have tripod, or stands,  
22 and they place it there, as close as possible to the table, and  
23 then the waiter serves.

24 THE INTERPRETER: No: Runners will serve the meal.

25 THE COURT: The runners serve?

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Velandia - direct

1 THE WITNESS: The runners serve.

2 THE COURT: How do they know which order to place in  
3 front of which customer?

4 THE WITNESS: Because when each waiter takes the order  
5 for the meal, he writes out the number of the table and also  
6 each chair has a certain -- the meal. He assigns it like that.

7 THE COURT: What does he do with the order so that the  
8 runner will know?

9 THE WITNESS: As I said before, the waiter takes the  
10 order, and then in an orderly fashion, places it on the  
11 computer. And in the kitchen they receive a receipt, like a  
12 printout of that order. And that's how runners know who  
13 gets -- each person sitting at the table, who gets what.

14 THE COURT: Are the orders taken in Spanish or in  
15 English?

16 THE WITNESS: No, they're taken in English. However,  
17 if there are customers who speak Spanish, I will speak to them  
18 in Spanish.

19 THE COURT: So the busboy or, excuse me, the food  
20 runner sees an English order?

21 THE WITNESS: Yes; everything is done in English.

22 THE COURT: So is it a requirement to know English, to  
23 be a runner?

24 THE WITNESS: No, not really, because the runners, all  
25 they see is the plate or the dish number, and they -- the dish



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Velandia - direct

1 name and the name of the dishes, and they hardly have any  
2 interaction with the customers.

3 THE COURT: So they tell from the order; is that  
4 right? They can tell whether the order is right, from the  
5 English, even if they don't speak English?

6 THE WITNESS: I think so, because they already know  
7 the name of each dish.

8 THE COURT: Who tells them?

9 THE WITNESS: That they learn when they are being  
10 trained as runners.

11 THE COURT: It changes each day, doesn't it?

12 THE WITNESS: No, the only thing that changes is the  
13 specials, but the restaurant has a fixed menu all the time.

14 THE COURT: And the specials have numbers?

15 THE WITNESS: No, they don't have numbers. We just  
16 know them as the special part --

17 THE INTERPRETER: Other special pasta?

18 THE WITNESS: -- special appetizer, special meat, and  
19 the special dessert. So that's how they know that the special  
20 is a special, and that's how they will serve it to the  
21 customers.

22 THE COURT: Please go ahead.

23 MR. PARKER: Thank you.

24 BY MR. PARKER:

25 Q. We have talked about the waiters and we have talked about

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Velandia - direct

1 the food runners. What do the busboys do in the dining room?  
2 What are their jobs?

3 A. Busboys are in charge of assisting waiters with the  
4 service.

5 Q. And assisting in terms of what? Could you describe some of  
6 their duties?

7 A. Yes. The waiter welcomes the guests at the table, and then  
8 he has to tell what type of water, for example, to bring, or if  
9 they initially order a coffee, we have to let the busboy know  
10 so that he can make it.

11 And then once the dessert comes, we have to know  
12 what's going on at the table so that they can help assist in  
13 the process as well.

14 THE COURT: Who sets the table?

15 THE WITNESS: Busboys are in charge of that.

16 BY MR. PARKER:

17 Q. Who cleans the tables after guests have completed their  
18 meals?

19 A. That's the busboys' main duty, to clean the tables.

20 THE COURT: Do they clean it after they take the  
21 dishes off, or does the waiter clean it?

22 THE WITNESS: No, usually they are the ones who clean  
23 them.

24 THE COURT: The waiter sets up the new table or the  
25 busboy?

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Velandia - direct

1 THE WITNESS: No, the new table is the busboy, is the  
2 one who will reset it.

3 THE COURT: So far you've been talking about the Grand  
4 Canal?

5 MR. PARKER: Yes, your Honor.

6 THE WITNESS: Yes, exactly the regular service.

7 THE COURT: Go ahead.

8 BY MR. PARKER:

9 Q. Again, focusing on the Grand Canal, how are the busboys  
10 assigned to work in the Grand Canal?

11 MR. DELANEY: Objection.

12 THE COURT: Foundation for the question?

13 Q. When the busboys work in the Grand Canal, do you know where  
14 they physically work?

15 A. Yes. Daily, depending on the number of reservations, we  
16 have maps of the different stations, in which we can split the  
17 dining room. And to each station, there is a -- we designate  
18 one waiter and one busboy.

19 THE COURT: Who makes out the maps for the different  
20 breakdowns of tables and waiters and busboys?

21 THE WITNESS: The manager in the shift.

22 Q. During the time that Mr. Pistorio was the general manager,  
23 who made up the individual daily maps where waiters and busboys  
24 were assigned to work?

25 A. Usually he was the one doing them.

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Velandia - direct

1 Q. So you have talked about the Grand Canal. How do the  
2 responsibilities of a waiter differ when working in the Rialto  
3 Room and a private party?

4 THE COURT: Let me clear up one thing. If  
5 Mr. Pistorio takes a day off, who did it?

6 THE WITNESS: In case Mr. Pistorio has a day off or  
7 comes in a little late in the morning, somebody would help him  
8 in that case; I would do that sometimes.

9 THE COURT: Go ahead.

10 BY MR. PARKER:

11 Q. Could you describe now how the responsibilities of a waiter  
12 differ when working in a private party in the Rialto Room?

13 MR. DELANEY: I am going to object to the extent it's  
14 vague as to time.

15 THE COURT: I'll sustain the objection. Why don't you  
16 do the date and time.

17 BY MR. PARKER:

18 Q. After the ownership and management change occurred in 2005,  
19 and from that point, during the time Mr. Pistorio was working  
20 in the restaurant as a general manager, how did the duties of  
21 the waiter working in the Rialto Room in a private party differ  
22 from those when the waiter worked in the dining room?

23 A. Well, because it is a private event, we all work based upon  
24 a contract. Then the difference is that all our  
25 responsibilities is already detailed in writing. And then as a

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Velandia - direct

1 team, we set up and serve the tables. And what I mean by that  
2 is that waiters, busboys and runners were all helping in the  
3 preparation.

4 And then the next thing the waiter does now is take  
5 the order and put it on the computer.

6 THE COURT: Who decides what waiters, busboys and  
7 runners take part in the party in the Rialto Room?

8 THE WITNESS: The general manager is the one who does  
9 that, when he creates the schedule.

10 BY MR. PARKER:

11 Q. Do you know Rachel Lovaglio?

12 THE COURT: Some busboys, some food runners and some  
13 waiters don't participate in the private party?

14 THE WITNESS: No, your Honor. The schedule varies,  
15 and if you work -- it just rotates. So sometimes you work in  
16 private events, other times you don't.

17 BY MR. PARKER:

18 Q. Do you know Rachel Lovaglio?

19 A. Yes, I know her.

20 Q. Who is she?

21 A. Currently her position is, she's in charge of private  
22 events.

23 Q. How long has she been with Remi Restaurant?

24 A. I don't recall the exact date she started working there,  
25 but I think that it is around '98 or '99.

C43kcar3

Velandia - direct

1 THE COURT: Did she work just on private events then?

2 THE WITNESS: No, your Honor. Originally she was the  
3 general manager.

4 THE COURT: When did she start working on private  
5 events?

6 THE WITNESS: In the same way, I don't know the exact  
7 date, but I know she worked for approximately one year as  
8 general manager. And then after that, then they spoke with  
9 Mr. Antonucci, and it was agreed that she was going to be the  
10 manager of the private events.

11 THE COURT: Approximately what year?

12 THE WITNESS: I think it was perhaps in 2000.

13 THE COURT: Did she work under the new management  
14 too --

15 THE WITNESS: Yes, your Honor.

16 THE COURT: -- as in charge of private events?

17 THE WITNESS: Yes, but I'd like to clarify that she is  
18 in charge of selling the event, and then she's in charge of all  
19 the details. And then based on all those details is how we  
20 work the party.

21 THE COURT: Are you going to cover Remi To Go also,  
22 Mr. Parker?

23 MR. PARKER: Yes. I can do that actually right now.

24 BY MR. PARKER:

25 Q. What is Remi To Go, Mr. Velandia?

C43kcar3

Velandia - direct

1 A. Remi To Go is a section of the restaurant which is in  
2 charge of fast food, just so to speak.

3 Q. Where is Remi To Go located?

4 A. It's adjacent to the restaurant. It's located in front of  
5 the Rialto, across from the atrium.

6 Q. What types of employees work in Remi To Go?

7 A. In Remi To Go, they have some in-house employees, and they  
8 work the shift from 7:00 to 4:00 or 8:00 to 4:00 I'm not sure.

9 Q. Are those the operating hours?

10 A. Yes.

11 Q. Is it open for dinner?

12 A. No.

13 Q. Did you ever work in Remi To Go?

14 A. No.

15 Q. Back at the time that the new ownership and management came  
16 into Remi, who was in charge of Remi To Go?

17 A. Ursula.

18 Q. And what was her job?

19 A. She is the manager of Remi To Go.

20 Q. Do you remember her last name?

21 A. No, I don't recall her last name.

22 Q. Is she still there?

23 A. Yes, she is still working there.

24 Q. And is she still the manager of Remi To Go?

25 A. Yes, she's still the manager.

C43kcar3

Velandia - direct

1 THE COURT: What type of employees work for her?

2 THE WITNESS: Your Honor, what do you mean by what  
3 type of employee?

4 THE COURT: The waiters, food runners, busboys or  
5 cooks.

6 THE WITNESS: No, the Remi To Go employees don't have  
7 such type of employees, like runners and busboys. It works  
8 pretty much like a cafeteria; they give the clients the product  
9 over the counter.

10 THE COURT: Who gives them the product?

11 THE WITNESS: Behind the counter, they have three or  
12 four people who help the clients from behind the counter.

13 THE COURT: Where do they get the food?

14 THE WITNESS: The food is on the inside of the  
15 counter, then customers can see the food, and they queue on a  
16 line, and they place their order, they say they want this pasta  
17 or this sandwich, and then the employee from the inside passes  
18 it to them, and then they go up to the head of the line and  
19 pay.

20 THE COURT: Where does the employee behind the counter  
21 get the food to put in the cafeteria?

22 THE WITNESS: That food was prepared in the kitchen,  
23 which is the same kitchen as the restaurant. In the morning  
24 the food is ready and they bring it up and they just place it  
25 behind the counter.



C43kcar3

Velandia - direct

1 THE COURT: Who brings it up?

2 THE WITNESS: The Remi To Go employees.

3 THE COURT: What happens in the atrium? What do they  
4 do in the atrium? Is food served in the atrium?

5 THE WITNESS: Well, your Honor, the atrium is a public  
6 space. The people who use Remi To Go, then they can sit  
7 outside at the tables, which are available for the public. And  
8 then sometimes we serve food in there, when there is a private  
9 event; and then, by permit from the city, we close the atrium  
10 and we operate as in the regular restaurant.

11 THE COURT: As in the Grand Canal or in the Rialto?

12 THE WITNESS: No, as the Rialto.

13 THE COURT: I guess that clears it up.

14 BY MR. PARKER:

15 Q. Has Remi ever employed anyone in the title of headwaiter?

16 MR. DELANEY: Objection.

17 THE COURT: Sustained.

18 THE WITNESS: No.

19 THE COURT: Calls for a conclusion.

20 BY MR. PARKER:

21 Q. Have you ever held the title of headwaiter at Remi?

22 A. Yes.

23 Q. When did you become a headwaiter at Remi?

24 A. After the new management and owners came to the restaurant,  
25 Mr. Pistorio spoke with me and told me that he wanted me to be

C43kcar3

Velandia - direct

1 the headwaiter.

2 Q. Do you remember when that occurred?

3 A. Well, I don't have the exact date in my mind, but it could  
4 be towards the end of 2005.

5 Q. Prior to when you had that discussion with Mr. Pistorio  
6 about becoming headwaiter, are you aware of whether anyone else  
7 at Remi, while you were employed there, was a headwaiter?

8 A. No. Before, there were only two managers for Grand Canal,  
9 and that was it.

10 THE COURT: Wasn't there a man named Lockard or  
11 something like that?

12 MR. PARKER: Lockard.

13 THE COURT: Do you know of a man named Lockard?

14 THE WITNESS: Yes, your Honor.

15 THE COURT: What was his position?

16 THE WITNESS: Mr. Lockard's position was he was  
17 general -- a manager of the restaurant.

18 (Continued on next page)

19  
20  
21  
22  
23  
24  
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C43dcar4

Velandia - direct

1 Q. When did he --

2 THE COURT: Before Mr. Pistorio?

3 THE WITNESS: Yes, your Honor, before Mr. Pistorio.

4 THE COURT: OK.

5 BY MR. PARKER:

6 Q. Did Mr. Lockard work at Remi after Mr. Pistorio started?

7 A. Yes, he worked with Mr. Pistorio for awhile.

8 THE COURT: When you say awhile, a week? Two weeks?

9 A month? Three months? A year?

10 THE WITNESS: Your Honor, I wouldn't be able to tell  
11 you exactly how long, but when the new management and owners  
12 arrived, they kept him also as a manager for awhile.

13 THE COURT: We had better take a break now and come  
14 back at 2 o'clock.

15 (Luncheon recess)

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Velandia - direct

**A F T E R N O O N   S E S S I O N**

2:16 p.m.

OSCAR VELANDIA,

Resumed, and testified further (through the interpreter) as follows:

THE COURT: Please be seated.

Call the witness.

MR. PARKER: Mr. Velandia.

DIRECT EXAMINATION (Resumed through the Interpreter)

BY MR. PARKER:

Q. Before lunch, you testified with regard to Brett Lockard, that Mr. Lockard was a manager at Remi, is that correct?

A. Yes, correct.

Q. And you had testified that he was employed at Remi for some period of time after the change in ownership and management of the restaurant, right?

A. Yes, correct.

Q. Are you aware of what his responsibilities were as a manager?

A. Yes, correct.

Q. Based on your knowledge and observation, what were Lockard's responsibilities?

A. Mr. Lockard, his responsibilities as the manager, he will come to the restaurant. He was in charge of the meals. He would only work meals -- dinner. He only worked dinners. And

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Velandia - direct

1 he would come and have a meeting with the general manager, who  
2 worked all day long. And then both of them would go together,  
3 attend the employees' meeting. And then during service,  
4 Mr. Lockard was in charge of patrolling the whole dining room  
5 and taking questions or anything from customers.

6 Q. Did Mr. Lockard ever wait on tables?

7 MR. DELANEY: Objection.

8 A. No. He was the manager.

9 MR. DELANEY: Withdrawn.

10 THE COURT: Where was the meeting of employees?

11 THE WITNESS: They are small meetings before dinner or  
12 lunch which take place so that we can discuss the meals and the  
13 specials.

14 THE COURT: Who would attend the meetings?

15 THE WITNESS: The white jackets, busboys, food  
16 runners, the waiters.

17 THE COURT: What are white jackets?

18 THE WITNESS: White jackets is a position at the  
19 restaurant, is the person who is in charge of shining  
20 silverware and glasses and bringing everything upstairs.

21 THE COURT: From where?

22 THE WITNESS: From the basement, which is where the  
23 washing machine is located.

24 THE COURT: And where would they put them when they  
25 got upstairs?

C43dcar4

Velandia - direct

1 THE WITNESS: They bring them upstairs. They would  
2 distribute them to each station.

3 THE COURT: Where would -- the stations are on the  
4 map?

5 THE WITNESS: Yes, your Honor. That was on the map.

6 THE COURT: You said silverware. What about China?

7 THE WITNESS: No. China I would always get  
8 downstairs, which is where they serve meals.

9 THE COURT: I see. Any other white jackets besides  
10 the people who bring up the silverware and glasses?

11 THE WITNESS: No, no other white jackets.

12 THE COURT: Are there any other employees of the  
13 restaurant who worked in the restaurant besides the waiters,  
14 busboys, food runners, and white jackets?

15 THE WITNESS: Yes. With the new change in  
16 administration or management, the waiters also used to wear  
17 white jackets for awhile -- for a certain period of time,  
18 rather, and, also, the person who was in charge of running  
19 things at the coffee station wears a white jacket as well.

20 THE COURT: Is that a separate position?

21 THE WITNESS: Yes. The coffee maker.

22 THE COURT: All right. Did all of those people attend  
23 the meetings?

24 THE WITNESS: Yes, your Honor, all of them.

25 THE COURT: Anyone else?

C43dcar4

Velandia - direct

1 THE WITNESS: No.

2 THE COURT: The manager?

3 THE WITNESS: Yes. The manager was always there  
4 because he was the one who would normally preside or lead the  
5 meeting.

6 THE COURT: OK.

7 BY MR. PARKER:

8 Q. Just to take that one step further.

9 Besides the busboys, the white jackets, the runners  
10 and the waiters and the managers, what other kinds of employees  
11 worked at the restaurant during the service of meals?

12 A. So we also had -- we had; we no longer have -- a sommelier  
13 who helps in the service of meals.

14 THE COURT: A what?

15 THE INTERPRETER: Meal service.

16 THE COURT: What is the name?

17 THE INTERPRETER: Sommelier, s-o-m-m-e-l-i-e-r.

18 MR. PARKER: Sommelier?

19 THE INTERPRETER: Sommelier.

20 THE COURT: What is his or her function?

21 THE WITNESS: The job of the sommelier is to help  
22 people choose wines.

23 THE COURT: Now, would any employees of Remi To Go  
24 attend the meetings?

25 THE WITNESS: Also those who work the parties, because

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Velandia - direct

1 they don't always take place at the same time as service, they  
2 all go and get together and discuss what will be done and how  
3 the party will be served.

4 THE COURT: Do they go to the employee meetings we  
5 were just discussing?

6 THE WITNESS: No, neither ones work in the parties.

7 THE COURT: Do the cooks attend the employees'  
8 meeting?

9 THE WITNESS: No. Your Honor, they never attended  
10 that type of meeting.

11 BY MR. PARKER:

12 Q. Does Remi have a bar?

13 A. Yes. It has two bars.

14 Q. And does it have bartenders?

15 A. Yes. That, too.

16 Q. Did the bartenders attend the daily meetings you mentioned?

17 A. Yes, bartenders as well.

18 Q. Are there bartenders stationed at bars for each service?

19 A. Yes. They are always at the bar.

20 Q. And in the kitchen of the restaurant, what kinds of  
21 employees work there during meal service?

22 A. Well, there the white jackets, food runners, cooks and  
23 dishwashers.

24 Q. Now, with regard to Mr. Lockard, during the time that he  
25 was manager at Remi, did he share in the tip pool?



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Velandia - direct

1 A. No, because he was the manager, therefore he would not take  
2 part in the pool of tips.

3 Q. Have you ever worked in the Grand Canal, the dining room at  
4 Remi, on any occasion where you were not assigned to wait  
5 tables?

6 A. No.

7 Q. Has there ever been a time that you worked at Remi where  
8 you were not part of the -- well, let me ask it differently.

9 Did you receive tips as part of your job at Remi?

10 A. Yes. Each time I work I would receive tips.

11 Q. Has there ever been any time while you worked at Remi that  
12 you did not share in the tip pool?

13 A. No. No.

14 Q. Since you became a headwaiter at Remi, have there been any  
15 other headwaiters there?

16 A. Yes, there have been other headwaiters.

17 Q. What are their names?

18 A. I don't recall all of them, but I know that Alessandro  
19 Mancino was one of the headwaiters. Stacy Crow. There was  
20 another headwaiter who was Italian but I can't recall his name  
21 right now. Also, Michelle Tabossi and Luigi Martini.

22 Q. Where in the restaurant did each one of those persons work?

23 MR. DELANEY: Objection.

24 THE COURT: I will allow the question.

25 A. Headwaiters work at Grand Canal and also sometimes at the

C43dcar4

Velandia - direct

1 party room.

2 THE COURT: Were all of those people headwaiters  
3 before you became a headwaiter?

4 THE WITNESS: No. They were simultaneously.

5 THE COURT: They all worked while you were a  
6 headwaiter?

7 THE WITNESS: No. From when I was a headwaiter, first  
8 was the other Italian guy, and after him was for a while  
9 Alessandro Mancino. And after that Michelle Tabossi and after  
10 him Stacy Crow.

11 THE COURT: Did they work different shifts than you?

12 THE WITNESS: Not always. Sometimes we used to  
13 coincide at the same shift.

14 BY MR. PARKER:

15 Q. When the ownership and management of Remi changed in 2005,  
16 immediately before that, what type of clothing did you wear to  
17 work as a waiter?

18 A. As I said before, initially we used to wear a white jacket.  
19 And then the new management changed to a white shirt and a  
20 black jacket -- a vest and black pants and an apron.

21 Q. And at any point in time, did you change your dress at work  
22 from what you just described?

23 A. Yes.

24 Q. When was that?

25 A. Once they established the positions such as headwaiter, and

C43dcar4

Velandia - direct

1 that's when Mr. Pistorio gave us the opportunity or the option  
2 whether if we wanted to wear a suit, because as a matter of  
3 fact, the gentleman who helps with the wines, he has always  
4 worn a suit.

5 Q. When did you -- did you begin at some point wearing a suit  
6 to work?

7 A. Yes.

8 Q. When was that?

9 A. As I said before, once they had the transition and  
10 Mr. Pistorio asked me whether I wanted to wear a suit, then I  
11 said yes to him.

12 Q. That was in late 2005, approximately?

13 A. Yes. I think that it was towards the end of 2005 and  
14 towards the beginning of 2006.

15 Q. You mentioned that the sommelier wore a suit to work. Did  
16 any other Remi employees wear a suit or jacket or tie during  
17 that same time?

18 A. Only Nick, Michelle Tabossi, and myself would wear a suit,  
19 and Alessandro didn't like wearing a suit so he didn't wear it  
20 to work, and, also, the other Italian gentlemen didn't like  
21 them so they didn't wear them.

22 Q. When did Arturo Caravantes leave his job at Remi?

23 MR. DELANEY: Objection.

24 THE COURT: Objection sustained to the form of the  
25 question.

C43dcar4

Velandia - direct

1 Q. Do you know the plaintiff Arturo Caravantes?

2 A. Yes.

3 Q. Did there come a time when he stopped working at Remi?

4 A. Yes.

5 Q. When was that?

6 A. Towards the end of 2008.

7 Q. What month in 2008?

8 A. August.

9 Q. I want to talk about the period of time in the next series  
10 of questions beginning when the new company took over in 2005  
11 through when Mr. Caravantes left Remi in August of 2008.

12 A. OK.

13 Q. During that time, did you ever hire an employee to work at  
14 Remi?

15 A. No, I never did.

16 Q. Do you know a Lurdes Carrera?

17 A. Yes. She still works at Remi.

18 Q. What does she do there?

19 A. She is a busgirl.

20 Q. Did you have any involvement in her hiring at Remi?

21 A. No, I didn't have any.

22 Q. Are you aware of who hired her, Lurdes Carrera?

23 A. Mr. Francisco Pistorio.

24 Q. During that timeframe we're discussing, from when the new  
25 company came in until August of 2008, were you ever given the

C43dcar4

Velandia - direct

1 authority to hire employees at Remi?

2 MR. DELANEY: Objection.

3 A. No, I never had that authority.

4 Q. During that same timeframe, from when the new company came  
5 in 2005 through August 2008, did you ever fire an employee from  
6 a job at Remi?

7 A. No, sir, I never did.

8 THE COURT: Did you ever interview people for  
9 employment at Remi?

10 THE WITNESS: No, I never conducted an interview for  
11 anything.

12 Q. Did anyone in management grant you the authority to fire an  
13 employee at Remi?

14 A. No, nobody.

15 Q. From 2005, when the new company came, until August 2008,  
16 did you ever promote any Remi employee to another position in  
17 the restaurant?

18 A. No, sir. I didn't do that either.

19 Q. Were you ever given the authority by management to promote  
20 employees to other positions in the restaurant?

21 A. No.

22 Q. During the timeframe from 2005, when the new company came,  
23 until August of 2008, did you ever demote an employee from one  
24 position to a lower one in the restaurant?

25 A. No.

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Velandia - direct

1 Q. Did anyone in management ever give you the authority to  
2 demote an employee to a lower position?

3 A. No, sir. None of that.

4 Q. Between 2005, when the new company came, and August 2008,  
5 did you ever grant any employee of Remi a pay raise?

6 A. No. Never.

7 Q. Did anyone in management give you the authority to grant  
8 pay raises for employees?

9 A. No, sir.

10 Q. Between those times that we have been discussing, 2005  
11 through August 2008, did you ever set the initial salary or pay  
12 rate for a new employee coming into Remi?

13 A. No.

14 Q. Did anyone in management ever give you that authority?

15 A. No, never. I never had that authority.

16 Q. Between when the new company came in 2005 and August 2008,  
17 did you ever suspend any employee from work at Remi?

18 A. No, I never did that.

19 THE COURT: Did you cause any employee to be suspended  
20 from work?

21 THE WITNESS: No, sir.

22 THE COURT: Did you do anything to cause a complaint  
23 about employees to management?

24 THE WITNESS: No, your Honor. I didn't do that  
25 either.

C43dcar4

Velandia - direct

1 BY MR. PARKER:

2 Q. Were you ever given the authority by Remi management to  
3 suspend employees from work?

4 A. No.

5 THE COURT: Did you tell employees, based on your  
6 observations, why they were suspended?

7 THE WITNESS: If I ever spoke with anyone regarding a  
8 suspension, it was because I was assisting Mr. Pistorio with  
9 translation.

10 BY MR. PARKER:

11 Q. Between that --

12 THE COURT: What was Mr. Pistorio's native language?

13 THE WITNESS: Italian.

14 BY MR. PARKER:

15 Q. Between 2005, when the new company came, and August 2008,  
16 did you consider yourself to be a manager at Remi?

17 A. No. No, sir.

18 Q. Since the new company -- from the time the new company took  
19 over in 2005, until Mr. Caravantes left Remi's employment in  
20 August 2008, who was your boss at Remi?

21 A. Mr. Francesco Pistorio.

22 Q. When did Mr. Pistorio -- well, did there come a time when  
23 he left Remi's employ?

24 A. Yes, he left. He left Remi.

25 Q. When did he leave Remi?

C43dcar4

Velandia - direct

1 A. He left towards the beginning of June of 2008.

2 Q. After Mr. Pistorio left, did you have a different boss?

3 A. Yes. Carlo Maggi.

4 Q. What's Mr. Maggi's job title?

5 A. Mr. Maggi came to replace Mr. Pistorio. He's the general  
6 manager.

7 THE COURT: Before or after Mr. Pistorio left?

8 THE WITNESS: After Mr. Pistorio left.

9 THE COURT: How long after?

10 THE WITNESS: It was about two weeks after  
11 Mr. Pistorio left.

12 THE COURT: Who was manager -- who acted as manager in  
13 the meantime?

14 THE WITNESS: Mr. Roberto Delledonne.

15 Q. Who is Roberto Delledonne?

16 A. He's one of the shareholders of the restaurant.

17 Q. How were --

18 THE COURT: Did he hold employee meetings?

19 THE WITNESS: He would attend the meetings when  
20 Mr. Pistorio wasn't there, but he would not conduct the  
21 meetings himself.

22 THE COURT: Who would do the assignments?

23 THE WITNESS: If I had the day off, Alessandro would  
24 do them, or if I was there then I would do them myself.  
25 Otherwise, Michelle Tabossi would do it, or whoever was there



C43dcar4

Velandia - direct

1 at the time.

2 THE COURT: Who would hire and fire employees and  
3 suspend them during that period?

4 THE WITNESS: Well, during that time, there was no  
5 hiring or firing of any employee until Carlos came in.

6 THE COURT: Were there discussions about -- who would  
7 conduct discussions with the employees about their performance  
8 at work?

9 MR. PARKER: Your Honor, do you mean during this --

10 THE COURT: During that period.

11 THE WITNESS: Well, at that time, because it was such  
12 a short period of time, nothing really that deserved that  
13 attention ever took place, but if any such situation had  
14 occurred, they would have to speak with Mr. Delledonne.

15 THE COURT: Did any such discussions occur with either  
16 Mr. Caravantes or Mr. Sotarriba, to your knowledge?

17 THE WITNESS: During that period of time, those two  
18 weeks?

19 THE COURT: Yes.

20 THE WITNESS: No. No, there was no problem.

21 THE COURT: All right.

22 BY MR. PARKER:

23 Q. Again, focusing on the period between when the new company  
24 came and August of 2008, how did the busboys and the white  
25 jackets and the food runners and the waiters, how was their

C43dcar4

Velandia - direct

1 work scheduled?

2 MR. DELANEY: Objection.

3 THE COURT: As transcribed, it doesn't make sense so I  
4 will sustain the objection.

5 Q. Are you familiar with how the Remi employees' work  
6 schedules were determined?

7 THE COURT: You are talking about -- do you mean by  
8 "schedule" what days they would work or what shifts they would  
9 work?

10 MR. PARKER: Yes, your Honor.

11 A. Yes.

12 Q. And during the time that Mr. Pistorio was the general  
13 manager of Remi, who prepared employees' work schedules?

14 A. Well, Mr. Pistorio was the one that used to prepare those  
15 schedules. However, he would give people the opportunity to  
16 put in requests for days.

17 Q. And did you from time to time put in requests for days off?

18 A. Yes, I, too.

19 Q. To whom did you communicate your request for days off?

20 A. I would have to let Mr. Pistorio know. That way when he  
21 would make the schedule, he would know how many days I was  
22 available for work.

23 Q. Did you ever -- while Mr. Pistorio was the general manager  
24 at Remi, did you ever have the responsibility to receive  
25 requests from employees for days off from their work schedules?

C43dcar4

Velandia - direct

1 A. No, never.

2 Q. While Mr. Pistorio was the general manager, did you ever  
3 prepare any work schedules for employees?

4 A. No. What would happen is that Mr. Pistorio would pick up  
5 or gather up all the requests, and he was the one who would  
6 prepare the schedules.

7 MR. DELANEY: I move to strike that answer, your  
8 Honor. It calls for speculation. It is speculative. He  
9 didn't lay any foundation how he knows that, or if he ever saw  
10 Mr. Pistorio prepare any schedules.

11 THE COURT: Well, it is conclusory.

12 Did you ever receive from employees requests for days  
13 off?

14 THE WITNESS: No, your Honor. The way it works is  
15 there is an envelope at the front desk where the hostess is so  
16 people go and they drop the requests in there.

17 THE COURT: And you don't pick up the requests?

18 THE WITNESS: No. No, sir.

19 THE COURT: Who picks up the requests that are dropped  
20 in that box, if you know?

21 THE WITNESS: Mr. Pistorio would pick them up, and  
22 then he would announce that I'm not taking any more requests  
23 because I'm about to start making the schedule.

24 THE COURT: All right.

25 BY MR. PARKER:

C43dcar4

Velandia - direct

1 Q. And how often were work schedules prepared during this  
2 time?

3 A. Weekly.

4 Q. Did you ever prepare any of the weekly schedules while  
5 Mr. Pistorio was there as the general manager?

6 THE COURT: That is an ambiguous question. "While"  
7 covers days off as well as the schedule.

8 Q. During the time that Mr. Pistorio was employed at Remi as  
9 the general manager, did you ever prepare any of the weekly  
10 work schedules?

11 A. No. While Mr. Pistorio was there I never prepared the  
12 schedules. He did them all the time.

13 Q. Have you ever prepared any of the weekly work schedules at  
14 Remi?

15 A. Yes. During the time that Mr. Delledonne -- while we were  
16 waiting for Carlos to arrive, I helped Mr. Delledonne print out  
17 the schedules for the parties that were going to take place.

18 Q. When you were working at Remi during this time, 2005  
19 through 2008 August and you were waiting tables, did you  
20 have -- how were your work areas within the restaurant  
21 assigned?

22 A. I don't understand the question.

23 Q. If you were assigned to work on a particular day in the  
24 dining room as a waiter, how would you know where in the dining  
25 room you were required to work?

C43dcar4

Velandia - direct

1 A. OK. Now I understand. Well, Mr. Pistorio would come and  
2 take a look of the people who were working, and then he would  
3 get a map and he would indicate where everybody -- each one had  
4 to work.

5 Q. As a headwaiter, were you assigned to work in any  
6 particular locations within the dining room?

7 A. Well, once I was a headwaiter, then headwaiters usually  
8 work the stations, the one or two which are the ones more up in  
9 the front of the restaurant.

10 Q. While you were working at Remi, before the new owners came  
11 in 2005, what did -- what name did -- how did people address  
12 you?

13 A. Oscar.

14 Q. And since the new owners came in 2005, how do employees  
15 address you at work?

16 A. The same thing, by my first name, Oscar.

17 Q. How did you address Mr. Pistorio when he worked there?

18 A. As Mr. Pistorio.

19 Q. Did you have occasion to hear the way other employees  
20 addressed Mr. Pistorio at work?

21 MR. DELANEY: Objection.

22 THE COURT: Objection overruled.

23 A. Yes. I had the opportunity because we were all working  
24 together in the same place. Everybody used to call him  
25 Mr. Pistorio.

C43dcar4

Velandia - direct

1 THE COURT: How many tables does a waiter handle at  
2 Remi Restaurant? How many are assigned to a waiter?

3 THE WITNESS: I would say approximately eight to ten  
4 tables.

5 THE COURT: To one waiter?

6 THE WITNESS: Yes.

7 THE COURT: And one busboy?

8 THE WITNESS: Yes, your Honor.

9 THE COURT: And one food runner?

10 THE WITNESS: No, your Honor. Food runners don't have  
11 a station. They're not assigned to any part of -- a specific  
12 part of the restaurant.

13 THE COURT: How many white jackets?

14 THE WITNESS: It could be one or two, depending on how  
15 many people we're expecting.

16 BY MR. PARKER:

17 Q. You mentioned earlier that you have been a party captain at  
18 Remi?

19 A. Yes.

20 Q. What exactly is a party captain?

21 A. The captain -- the party captain takes the information that  
22 Rachel -- verbatim -- I mean, provided him, and based on that  
23 it's called VEO. We set up the room according to how the  
24 party's going to be. Then the captain has to make sure the  
25 room is ready for when the client arrives. Then the room is

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Velandia - direct

1 all ready.

2 Q. When did you first serve as a party captain at Remi?

3 A. Well, when I first started, like I said before, Michelle  
4 Tabossi was the captain. Then there were some parties I would  
5 help him out and we would share the job but if there were  
6 several parties. If there was only one party, he would take  
7 care of the mission. But then when I started as full-time was  
8 when Michelle Tabossi left.

9 (Continued on next page)

C43kcar5

Velandia - direct

1 BY MR. PARKER:

2 Q. When was that?

3 A. I don't recall the dates, but it was around May of 2008.

4 Q. Have you, as a headwaiter at Remi, ever had the -- let me  
5 rephrase.

6 During the period of time between 2005, when the new  
7 company came in, and August 2008, as a headwaiter, did you  
8 ever, for any reason, tell an employee to go home from work?

9 A. No, I don't recall, but as a matter of fact, can you  
10 make -- rephrase the question? Because I'm not really  
11 understanding it.

12 Q. Was there ever a time between 2005, when the new company  
13 took over, and August of 2008 when you had occasion to send an  
14 employee home from work?

15 A. Well, not exactly sending them home, because the employees  
16 are already there; nobody wants to go home.

17 THE COURT: If someone gets sick?

18 THE WITNESS: Well, in that case, if somebody is  
19 feeling ill, then, yes, he would have to report to the manager  
20 and let them know that he's not feeling well so the manager  
21 could send him home.

22 THE COURT: What happens if two employees get in a  
23 fight?

24 THE WITNESS: In that case also, the manager has to  
25 intervene and determine what's the course of action to take.



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Velandia - direct

1 THE COURT: Did you ever do that for the manager?

2 THE WITNESS: No, not if there was any conflict,  
3 but -- because it was something serious, then I would have to  
4 speak with the manager in that case, Mr. Pistorio. And in case  
5 he wasn't in the restaurant, then I would have to get a hold of  
6 him and ask him what it is that he wanted me to do in that  
7 case.

8 THE COURT: Did he ever ask you to tell the employee  
9 that he had to go home?

10 THE WITNESS: No, that situation never occurred.

11 BY MR. PARKER:

12 Q. As a waiter in --

13 THE COURT: Mr. Pistorio spoke Italian, so how would  
14 he explain to this to Spanish employees?

15 THE WITNESS: Because Mr. Pistorio didn't used to  
16 speak with me in Italian, he spoke with me in English.

17 THE COURT: But how would he explain to the employee  
18 that he had to go home, if he spoke Italian and they spoke  
19 Spanish?

20 THE WITNESS: He would use the assistance of someone  
21 who spoke Spanish and English, like myself or Augustine Pena or  
22 Giovanni Pinot, who speaks Spanish very well.

23 THE COURT: Did you act in that capacity for  
24 Mr. Pistorio with either Mr. Caravantes or Mr. Sotarriba?

25 THE WITNESS: Perhaps I was in a meeting present when

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Velandia - direct

1 a meeting with Mr. Pistorio and Caravantes, Giovanni and Pena  
2 were present at the time.

3 THE COURT: And was Mr. Pistorio present also?

4 THE WITNESS: Yes. As a matter of fact,  
5 Mr. Pistorio's point was to have witness to what was going on  
6 and also for interpreting purposes.

7 BY MR. PARKER:

8 Q. Are there usual work hours for a waiter at Remi?

9 THE INTERPRETER: Please read that back to me.

10 (Record read)

11 A. Yes. A waiter who is on the schedule for work, would work  
12 approximately for lunch, from 11:00 to 2:00. And if he worked  
13 dinner, then he would have to work from 4:00 till around  
14 10:00 unless he had to close.

15 Q. What does "close" mean?

16 A. That means that that waiter will arrive a little bit later,  
17 around 4:45, and would leave after the last customer leaves.

18 Q. In that case, did the waiter who was doing the closing have  
19 any responsibilities other than just to stay there?

20 A. Yes. He would have to pick up the report from all the  
21 other waiters, plus do the numbers, and add up the tips.

22 THE COURT: Did he have to clean the tables?

23 THE WITNESS: No, your Honor. Usually busboys will do  
24 the tables.

25 THE COURT: A busboy had to stay?

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Velandia - direct

1 THE WITNESS: Yes. Usually one busboy, one white  
2 jacket, and one foot runner, yes.

3 THE COURT: They would have to serve food if it was  
4 after 10:00, if the customer had ordered it?

5 THE WITNESS: Yes, because the restaurant closes at  
6 11:30 at night. So that waiter has to -- if there is a  
7 customer who arrives at 11:20, he would have to order and wait  
8 for the meal to be served.

9 Q. Now, if you know, how does the restaurant get opened in the  
10 morning and closed at night?

11 A. Well, I like to know what it is you mean, whether it is  
12 administratively or physically.

13 Q. Physically.

14 A. Yes, I know how it's opened.

15 Q. Would you explain that.

16 A. Yes. Usually the manager opens up the front door and the  
17 lateral doors, and when it's summertime then they open all the  
18 doors.

19 Q. That's opening the restaurant. And how does the restaurant  
20 get closed physically at night?

21 A. In the same manner: The person who's in charge of closing  
22 the restaurant has to make sure that -- verify that all doors  
23 are closed, locked. And then that person has to make sure and  
24 wait, that the last customer left, and make sure that door is  
25 locked as well.

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Velandia - direct

1 Q. During the time when Mr. Pistorio was at Remi as the  
2 general manager, who opened and closed the restaurant  
3 physically?

4 A. He would do it usually. But if he wasn't going to be  
5 there, he would designate some other person.

6 THE COURT: And what employees?

7 THE WITNESS: Only headwaiters.

8 BY MR. PARKER:

9 Q. Were there occasions where you did the opening and closing  
10 of the restaurant?

11 A. Yes.

12 Q. When would that occur? When did that occur?

13 A. Like I said before, if Mr. Pistorio was to come in late, he  
14 would actually put it sometimes on the schedule that I would  
15 have to come in earlier and open the door to let in all the  
16 other employees.

17 And the same thing for dinner: If he would actually  
18 put it on the schedule, then I would stay and make sure I  
19 close.

20 Q. What did he put on the schedule to signify that you were  
21 either going to open or close or both?

22 A. Usually my schedule would have "L" for lunch or "D" for  
23 dinner, but if he opted for writing "MGR," then that would mean  
24 that I would also have to close the restaurant.

25 THE COURT: What were those letters that he would

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Velandia - direct

1 write, to close the restaurant?

2 THE WITNESS: MGR.

3 THE COURT: M as in Mary?

4 THE WITNESS: Yes, your Honor.

5 BY MR. PARKER:

6 Q. Now, on those occasions where Mr. Pistorio assigned you to  
7 open and/or close the restaurant, what were your  
8 responsibilities?

9 A. My responsibilities were the same -- I would come and do  
10 the setup with the waiters, and then we would ready all the  
11 stations, I would work all night long on my stations, and then  
12 at the end of the night, when I had my report done, I would  
13 give it to the closing waiter. And then all I would do is just  
14 wait for that waiter to finish and close so that I could close  
15 the doors.

16 Q. When you say you would give your report to the closing  
17 waiter, what report are you referring to?

18 A. The report from the daily sales.

19 Q. Was that the same or different from the report that you did  
20 daily if you weren't closing the restaurant?

21 THE COURT: I don't understand the question.

22 I don't understand the question.

23 MR. PARKER: I'll withdraw it.

24 Q. You mentioned that when you were assigned on the schedule  
25 as MGR to open and close the restaurant, that in the evenings

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Velandia - direct

1 you had to give a report to the closing waiter?

2 A. Yes, I had to give in a report, but that was my report in  
3 which I had to report my sales as a waiter. But once the last  
4 waiter finishes, then we had to do the closing in the computer.  
5 And then to do that closing, the report, we had to print out  
6 all the reports, which is cumulative. And that's the report  
7 for the whole day, for the closing.

8 THE COURT: So you put into the computer all of the  
9 waiters' reports for the day, at the end of the day?

10 THE WITNESS: No, your Honor. The computer does it  
11 all by itself. All I had to do was put in all the individual  
12 reports -- I didn't have to put them in. The computer already  
13 has each waiter's report. And then once the last waiter  
14 finishes, then the computer will give me an option to print out  
15 the general report.

16 THE COURT: And you printed it out?

17 THE WITNESS: Yes, your Honor.

18 BY MR. PARKER:

19 Q. And once you printed out the general report, what did you  
20 do with it?

21 A. Well, those are the jobs I had to do. I had to print out  
22 the final report, pick up all the envelopes from all the  
23 waiters in which they included the cash. And all that  
24 together, I would have to bring it down and put it in the safe  
25 at the office.

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Velandia - direct

1 Q. That process you have just described -- the printing out of  
2 the general report, assembling all the data from the waiters  
3 and putting it in the safe -- did you do that job when you were  
4 acting just as a waiter or when you were asked by Pistorio to  
5 close?

6 MR. DELANEY: Objection.

7 THE COURT: I will allow the question.

8 THE WITNESS: No. Up to this date, I don't have to do  
9 that because it's actually the manager the one who printed it  
10 out. And at the time, when Mr. Pistorio was there, I had to do  
11 that once or twice a week, just so that Mr. Pistorio can go  
12 home earlier and he could rest.

13 THE COURT: So you're saying you did it when  
14 Mr. Pistorio was there, but you don't do it now?

15 THE WITNESS: I used to do it when Mr. Pistorio was  
16 there, but only when he wanted me to cover for him. And to  
17 this date, I do it only if Carlos asks me to do the report for  
18 him. But that's only if he's not at the restaurant or has the  
19 day off.

20 BY MR. PARKER:

21 Q. Just if you could take a look in the Plaintiffs' Exhibit  
22 binder and take a look at Exhibit P70. Do you have P70?

23 A. Yes.

24 Q. And do you see where it says on the first page of P70,  
25 there's a column "Servers," to the right of that there's a

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1 column that says "Position," and then to the right of that  
2 there are --

3 THE COURT: I'm sorry, which book is that in?

4 MR. PARKER: It should be in the Plaintiffs' Exhibit  
5 binder, your Honor, Volume II.

6 THE COURT: OK. P70?

7 MR. PARKER: P70, on the first page, Judge.

8 THE COURT: And I am referring to the column on the  
9 left that says "Servers," it has Oscar Velandia listed, there's  
10 a column next to it that says "Position," it says "Server," and  
11 then to the right of that, under Monday, February 13th, in that  
12 column, under L, it says MGR, and under D, it says MGR.

13 A. Yes, I see it.

14 Q. Is this a copy of a weekly schedule?

15 A. Yes, it is a copy of that.

16 Q. And what does that reference to MGR mean?

17 MR. DELANEY: Objection; he's already testified he  
18 didn't make these schedules.

19 THE COURT: Well, I'm going to allow the question.  
20 Sometimes upon further questioning, it becomes clear what he is  
21 saying.

22 A. In this case of the MGR letters, they're referring to the  
23 assignment I had for that day.

24 Q. And what was the assignment?

25 A. According to the schedule for that week, on Monday I had to



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1 come open the restaurant's doors. I was going to work as a  
2 waiter as well. And for dinner, I would work as a waiter too,  
3 but that I will stay after Mr. Pistorio leaves, I would have to  
4 print out the general report and bring the documentation  
5 downstairs to the office and close the doors.

6 Q. From time to time you had the responsibility to open and  
7 close the restaurant physically, as you stated?

8 A. Yes.

9 Q. How was that done?

10 A. Like I said, I would -- once I run all the documentation  
11 downstairs, I would sit at the bar, wait for the waiter to  
12 finish, then go downstairs, change his clothes, and the busboy  
13 as well. Then I would get to turn all the lights out and close  
14 the doors.

15 Q. During the time that Mr. Pistorio was general manager at  
16 Remi, you were a waiter sharing in the tip pool there, correct?

17 A. Yes, that's correct.

18 Q. Are you familiar with the manner in which tips were  
19 distributed to employees?

20 A. Yes, of course.

21 Q. Describe that process, please.

22 A. The process works in this way: We work based on points.  
23 Bartenders and waiters earn one point; foot runners, .75;  
24 busboys, .50; and white jackets, .38. And then at the end of  
25 the day, all points are added. And tips are divided in that

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1 number of points -- by the number of points. And the result of  
2 all that, it's what one point is worth.

3 THE COURT: One point per day, one point per hour, one  
4 point for what?

5 THE WITNESS: No, one point per shift.

6 THE COURT: Any points for closing?

7 THE WITNESS: No, there are no extra points for  
8 closing because the people that close are not the same each  
9 day.

10 BY MR. PARKER:

11 Q. Could you turn in the Defendants' Exhibit binder to  
12 Exhibit D32.

13 A. Is it D or B?

14 Q. D.

15 THE INTERPRETER: B or D?

16 MR. PARKER: D32, D as in David, Defendants' binder.

17 A. OK, I got it.

18 Q. Does the document have a Remi logo at the top?

19 A. Yes, it has a logo on top.

20 Q. Are you familiar with this document?

21 A. Yes.

22 Q. What is it?

23 A. That's the form I was talking about before, how we allocate  
24 tips at the restaurant.

25 Q. And what are pages 2 and 3?

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1 A. It's the signature of all the employees consenting to page  
2 1.

3 Q. Now, on page 1, it says in the next to last paragraph that,  
4 "The wait staff has voted and agreed that Pablo Solis, waiter,  
5 and Oscar Velandia, waiter/party captain, should carry out the  
6 recordkeeping allocation and distribution of tip monies."

7 What does that mean?

8 A. That means that Mr. Pistorio called for a general meeting  
9 to talk about tips because when the new administration came in,  
10 I was already in charge of tips with Mr. Pablo Solis. And then  
11 Mr. Pistorio suggested that a new meeting be conducted because  
12 there were new employees, because he wanted to know that these  
13 new employees also agreed that I was in charge of the tips,  
14 like I was already in the past.

15 THE COURT: Is this relevant? Isn't this out of the  
16 case? It's out of the case.

17 MR. PARKER: Out of the case? I'm not sure what  
18 you're referring to, your Honor.

19 THE COURT: I thought any claims about wages and tips  
20 were out of the case.

21 MR. PARKER: No, no, they're not in the case, but the  
22 purpose of this is to have Mr. Velandia describe the process by  
23 which the employees voted to --

24 THE COURT: All right, OK.

25 MR. PARKER: I'm not sure where we were.

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1 THE COURT: You were on Exhibit 32, Defendants'  
2 Exhibit 32.

3 MR. PARKER: May I have the part of the answer  
4 Mr. Velandia's last read back, your Honor?

5 THE COURT: Yes, you may.

6 (Record read)

7 BY MR. PARKER:

8 Q. So the document indicates that the staff voted and agreed.  
9 And do you recall when that occurred?

10 THE COURT: This is just the new employees, is it not?

11 THE WITNESS: No, your Honor. This meeting, all the  
12 employees, the new employees were all required to go.

13 THE COURT: This document, 32, these are new  
14 employees; am I not right?

15 THE WITNESS: No --

16 THE COURT: I don't see Mr. Caravantes or  
17 Mr. Sotarriba amongst the signatures.

18 THE WITNESS: If their names are not there, it's  
19 because perhaps they did not attend the meeting.

20 THE COURT: Are all these employees new employees, on  
21 the list?

22 THE WITNESS: All were called to attend the meeting.

23 THE COURT: Are there old employees on the signatures?

24 THE WITNESS: No, they're not all there really; only  
25 those who were present there that day.

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Velandia - direct

1 THE COURT: Are there any persons employed before the  
2 meeting, employed in 2004, on that list?

3 THE WITNESS: Yes.

4 THE COURT: Who?

5 THE WITNESS: Oscar Velandia, Luis Ramos, Adrian Gill,  
6 Jose Ortiz, Jose Figueroa.

7 THE COURT: OK, I'm satisfied.

8 BY MR. PARKER:

9 Q. Following this event where the vote was taken and you and  
10 Pablo Solis were selected to handle the tips, for how long  
11 after this did you and Pablo Solis maintain responsibility for  
12 the tip pool at Remi?

13 A. Until approximately about six months ago.

14 MR. PARKER: Your Honor, I offer Exhibit D32 in  
15 evidence.

16 THE COURT: Any objection? 32 is admitted in  
17 evidence, Defendants' 32, without objection.

18 (Defendant's Exhibit 32 received in evidence)

19 BY MR. PARKER:

20 Q. Would you take a look at Exhibit D1, please. Tab 1. At  
21 the very beginning of the book.

22 A. Yes.

23 Q. What is D1?

24 A. That's a sheet everybody signs when they receive their  
25 tips.

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1 Q. Who prepares, during this time -- this was August 4th, 2008  
2 to August 10th, 2008 -- during this time period, from when the  
3 new company came until this document was prepared, who prepared  
4 these forms?

5 A. I was preparing them.

6 MR. PARKER: Your Honor, I offer D1 in evidence.

7 THE COURT: Any objection?

8 MR. DELANEY: No objection.

9 THE COURT: What day was Mr. Caravantes' last day? Is  
10 there a stipulation on what day was Mr. Caravantes' last day?

11 MR. PARKER: I don't know if we have a stipulation. I  
12 believe the last day of actual work was August 8th and the last  
13 day --

14 THE COURT: So he didn't work this prior period?

15 MR. PARKER: I believe he worked this particular  
16 period.

17 THE COURT: He worked during that period but not the  
18 entire period. It says to August 10th.

19 MR. DELANEY: I believe that was until on or about  
20 August 11th that he worked, August 11th.

21 THE COURT: August 11th?

22 BY MR. PARKER:

23 Q. The very next document --

24 THE COURT: Defendants' Exhibit 1 is admitted in  
25 evidence, with no objection.

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1 (Defendant's Exhibit 1 received in evidence)

2 THE COURT: Go ahead.

3 MR. PARKER: We are now looking at D2, your Honor.

4 THE COURT: Yes.

5 BY MR. PARKER:

6 Q. Are you familiar with this form?

7 A. Yes, sir.

8 Q. And what is it?

9 A. That page with tips distribution form.

10 Q. Was this a form that was prepared each week at Remi?

11 A. No. This is prepared twice a day, once for lunch, one for  
12 dinner.

13 Q. Who prepares that?

14 A. The closing waiter.

15 MR. PARKER: Your Honor, I offer D2 in evidence.

16 THE COURT: D2 is admitted. Any objection?

17 MR. DELANEY: No objection, your Honor.

18 THE COURT: D2 is admitted in evidence.

19 (Defendant's Exhibit D2 received in evidence)

20 BY MR. PARKER:

21 Q. Are you familiar with the term "voiding an order"?

22 A. Yes, I do.

23 Q. What does voiding an order mean, in the context of working  
24 at Remi?

25 A. It means that a certain item on a check from a table is

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1 going to be deleted or taken out of the check.

2 Q. During the time that Mr. Pistorio was the general manager  
3 at Remi, are you familiar with how an order actually was  
4 voided?

5 A. Yes, I know how one would void it.

6 Q. How would it be done, physically?

7 A. There is a card -- there is a card that has administrative  
8 functions for a manager. Then you swipe that in the computer,  
9 and then it opens up a screen. There is an option where you  
10 can open up the table and go directly to that item and delete  
11 it.

12 Q. During this time, from 2005, when the new company came,  
13 until August of 2011, were you ever asked to void an order?

14 A. Yes. Actually, Mr. Pistorio went ahead and got me my own  
15 card, just so -- because it was very busy, in case something  
16 needed to be voided, because waiters don't have the capacity to  
17 actually do that.

18 Q. When were you given a card in order to be able to void  
19 orders?

20 A. I don't recall the exact date.

21 Q. Would you, in the Plaintiffs' Exhibit binder, turn to  
22 Exhibit P11, please. Tab 11.

23 Do you recognize this type of document?

24 A. Yes, I do recognize it.

25 Q. What is it?



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1 A. This is -- hold on a second.

2 Yes, this came from Table 301, and it is scallopini,  
3 it's a cancellation, or voiding, scallopini caprese and  
4 bolognese.

5 Q. Does this represent the voiding of a particular order?

6 A. Yes, that's exactly what it is.

7 Q. In this particular case, who voided the order?

8 A. I did it.

9 Q. It has your name at the top of the page. And after your  
10 name it has MGR next to it.

11 Do you have any understanding of why MGR appears there  
12 on the document?

13 A. Yes, because in my function as a waiter, I wanted to  
14 explain that in order to access the computer, you need a code  
15 which identifies each waiter. And then after that, all the  
16 orders from the bar or the kitchen come out with that waiter's  
17 information. But since I'm a waiter, as a waiter, I don't have  
18 the capacity to void; my code doesn't give me the ability to  
19 void.

20 So Mr. Pistorio created a special code so that  
21 whenever he was absent, I could void and give a promo. And  
22 then it had to bear my name so that he knew what was the nature  
23 of the transaction.

24 THE COURT: It says on it "To Go." Is that a Remi To  
25 Go order?

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1 THE WITNESS: Yes, your Honor. That means that it was  
2 an order they were to take home.

3 THE COURT: But you don't know whether it was a Remi  
4 To Go order or a restaurant order?

5 THE WITNESS: No, your Honor, because what happened is  
6 that this -- a hundred percent sure that Remi To Go has its  
7 daily operations completely separated from the restaurant.

8 THE COURT: That code was Mr. Pistorio gave, did he  
9 give that out daily or was that a code that he allowed to  
10 operate for a period of time?

11 THE WITNESS: No, your Honor. He created a card with  
12 that code, and he gave it to me.

13 BY MR. PARKER:

14 Q. Now, we talked briefly earlier about the meetings that were  
15 held by Mr. Pistorio before lunch and before dinner. Do you  
16 recall that?

17 A. Yes, I recall.

18 Q. Were there any standard topics that were discussed in those  
19 meetings daily?

20 A. Well, we're talking about a meeting, we're talking about  
21 the meeting which are held daily for the regular operation of  
22 the restaurant; usually those meetings don't take any longer  
23 than five or ten minutes. So if there was something  
24 Mr. Pistorio wanted to communicate, he would do it there.  
25 However, if it was something very important, then he would call

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1 for another separate meeting, with everybody else in it.

2 Q. Let's talk about the shorter meetings, the five- to  
3 ten-minute meetings.

4 What types of issues were discussed at those meetings?

5 A. As I said before, it was about the regular operation,  
6 regarding specials as well. And there were things that had to  
7 do with the service or anything that wasn't going well that we  
8 had to discuss, Mr. Pistorio would want to talk about it during  
9 that meeting.

10 Q. Did any other Remi employees conduct any of those meetings  
11 while Mr. Pistorio was the general manager?

12 A. If Mr. Pistorio was present, he would always conduct the  
13 meetings. But if he was absent, then we would still hold the  
14 meeting, but it was only to discuss specials.

15 Q. And in his absence --

16 THE COURT: Wouldn't the assignments have to be made?

17 THE WITNESS: Yes, your Honor.

18 THE COURT: Who would make the assignments?

19 THE WITNESS: If Mr. Pistorio was not there, then I  
20 would do the map.

21 BY MR. PARKER:

22 Q. In Mr. Pistorio's absence, for those shorter meetings, who  
23 spoke?

24 A. If I was there and I was doing the closing, then I would be  
25 the one speaking at the meeting. But if Alessandro was there

C43kcar5

Velandia - direct

1 and he was doing the closing, then he would do the meeting,  
2 but, generally, I was the one who would do them when he was not  
3 present.

4 Q. You mentioned that occasionally there were meetings that  
5 Mr. Pistorio called, other than these shorter five- to  
6 ten-minute daily meetings. What type of meetings are you  
7 referring to?

8 A. Well, a good example would be the topic with the tips, so  
9 he would post a sign and it says it was mandatory attendance.

10 Q. Can you recall how many of those kinds of meetings that  
11 Mr. Pistorio held while he was general manager, the mandatory  
12 meetings?

13 A. Well, I do recall there were several, but I don't recall  
14 the exact number.

15 Q. While working at Remi, have you ever observed employees of  
16 the restaurant touching one another on the buttocks or in the  
17 genital area?

18 THE INTERPRETER: Please read that back to me.

19 (Record read)

20 A. Yes, many times.

21 (Continued on next page)

C43dcar6

Velandia - direct

1 Q. When did you first observe touching of that kind at Remi?

2 A. When I started working at Remi.

3 Q. Have you, yourself, been touched by other employees in the  
4 buttocks or in the genital area?

5 A. Yes, I have been touched.

6 Q. And have you engaged in touching other employees in either  
7 or both of those areas, the genital area or the buttocks area?

8 A. Yes, I have done that as well.

9 Q. Would you describe the circumstances under which this type  
10 of touching occurred at Remi, when -- we'll start with when you  
11 started working at the restaurant?

12 A. That's the type of behavior that presents itself suddenly.  
13 It is not a game but we Latinos, we consider that as playing.  
14 And that occurs when someone is trying to annoy someone  
15 basically and just to make others laugh.

16 Q. You testified that you first saw and experienced this when  
17 you started working at Remi, correct?

18 A. Yes, that's correct.

19 Q. Did this type of conduct continue after you had first  
20 started there?

21 A. Yes, sir. It has always been that way.

22 Q. Let's talk about the time period from when the new company  
23 came in to Remi in 2005.

24 Immediately before that, were employees touching one  
25 another in the same manner that you have described?

C43dcar6

Velandia - direct

1 MR. DELANEY: Objection.

2 THE COURT: Are you talking about before the new  
3 company? All right. I will allow the question.

4 THE WITNESS: Please read that back to me.

5 (Question read)

6 A. Yes.

7 Q. Who was involved in that type of touching at that time?

8 MR. DELANEY: Objection.

9 Your Honor, my objection is to speaking very generally  
10 about --

11 THE COURT: I have another matter on, so let's break  
12 for the day and start with a new question.

13 9:30 tomorrow.

14 (Adjourned to 9:30 a.m., Wednesday, April 4, 2012)

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